

Terms of Sale and Conditions of Delivery of Refrigeration AG

1. Scope of these Terms and Conditions

1.1 These Terms of Sale and Conditions of Delivery shall apply exclusively for all business relations including future business relations between us and the Customer. We herewith oppose Conditions of Purchase or any other terms and conditions of business of the Customer. They will not be applied. We are entitled to modify our Terms of Sale and Conditions of Delivery with effect for all future business relations with the Customer unilaterally following an appropriate indication.

1.2 Should one of the provisions of these Terms of Sale and Conditions of Delivery be or become invalid, this shall not affect the validity of this Contract; instead the lawful ruling shall apply. Under no circumstances will the subject provision in these terms of Sale and Conditions of Delivery be replaced by conditions of business of the Customer.

1.3 If there is a General Agreement between us and the Customer, these Terms of Sale and Conditions of Delivery shall apply both for this General Agreement and for the individual order contract.

2. Conclusion of contract, written form

2.1 Our offers are without engagement and non-binding until the contract is concluded.

2.2 Orders of the Customer are binding for the Customer and with our written confirmation of order the contract is deemed to have been concluded unless the Customer objects promptly in accordance with Section 2.3. Unless any other written confirmation is issued the invoice is deemed to be confirmation of order.

2.3 If the Customer is a merchant, our written confirmation only is material for orders and agreements unless the recipient objects promptly in writing. This applies in particular for orders and agreements made orally or by telephone.

2.4 Any modifications or supplements to the contract require our written confirmation in order to be valid. This also applies for deviations from the contractual requirements concerning written form.

2.5 A notification to us is no longer prompt if it is not received by us within seven days.

3. Delivery date, delivery, handing over

3.1 Delivery dates and periods are approximate times. If the Customer does not clarify all details of the order contract in time, if the Customer does not furnish all the advance inputs in time or does not release drawings promptly, the delivery dates shall be prolonged accordingly. Delivery dates are considered kept when we report readiness for delivery.

3.2 We are entitled to make part deliveries in as far as these do not fall below the minimum reasonable level.

3.3 The Customer shall check and sign the delivery note. Any objections must be reported to us promptly in writing. Otherwise the delivery quantity signed for shall be deemed recognised.

3.4 Delays in delivery due to operational faults, measures by public authorities or omissions or force majeure such as e.g. accidents, natural disasters, delayed or faulty deliveries of raw materials, semi-finished or finished products, etc. shall lead to an appropriate extension of the delivery period. Force majeure applies in particular also in the case of labour conflicts, especially strikes and lawful lockouts at our plant or at our sub-suppliers.

3.5 If the Customer sustains a loss due to a delay in delivery for which we are to blame, the Customer can claim compensation for this at a rate of 0.5% of the value of the delayed part of the overall delivery per day, but as a maximum 5% of the total order value. We are entitled to furnish evidence that a loss was not sustained or not sustained to this amount. In the event of delay in delivery the Purchaser can withdraw from the contract after setting a reasonable period of grace and/or claim damages in accordance with Section 9 if performance is not effected within the period of grace.

3.6 The Customer is obliged to accept the item of delivery promptly after the report of readiness for handing over. If the handing over or acceptance is not carried out on time through no fault of ours, the Customer shall be found in default with acceptance seven days after the report of readiness for handing over. Unless otherwise agreed the handing over or acceptance shall take place at our plant. The effect of handing over or acceptance shall in any event materialise when the item of delivery is started up, installed, processed or delivered on. With the exception of our personnel costs the Ordering Party shall bear all the costs of handing over, especially any operating and material costs.

4. Shipping and transfer of risk

4.1 Our delivery is effected ex works and with shipping the benefit and risk are transferred to the Customer. This applies even if we bear and/or insure the costs of transport on the grounds of individual agreements or erect or install the item of delivery at the Customer's.

4.2 At the request of the Customer and at the latter's cost we shall take out marine cargo (transport) insurance. We are entitled to name ourselves as beneficiary. We are only liable for exercising the due care in the selection of the transport insurer.

4.3 Items of delivery reported ready for shipping must be called up at once when the delivery date is reached. If shipping is delayed as a consequence of circumstances for which the Customer is responsible, the Customer shall be in default as of the date of reporting of readiness for shipping. The risk shall thus be transferred to the Customer. In this case we shall place the merchandise in storage at the cost and risk of the Customer.

4.4 If the freight to the Customer is not prepaid by us, the Recipient is obliged to pay the freight on delivery. In as far as we are obliged to bear the costs of transport on the grounds of an appropriate individual agreement the Customer can in this case deduct the freight he has paid when settling the invoice. If we are obliged by individual agreement to bear the costs of transport, this shall apply as a maximum for the distance between our plant and the destination stated in the confirmation. Any increase in the freight costs due to subsequent alteration of the type of conveyance, the route, the destination or similar circumstances affecting the freight costs shall be for the account of the Customer. In the case of deliveries to closer stations than those set out in the confirmation, we shall bear the freight in accordance with the aforesaid principles at most up to the actual destination.

4.5 The Customer shall note losses or damage during transport on the freight receipt with a corresponding reservation remark. Furthermore they shall be reported promptly to the carrier in writing. The Customer shall immediately take all steps necessary to maintain the rights of the Principal. Losses or damage due to transport must be reported to us within seven days.

4.6 Damage or losses due to transport shall not relieve the Customer from complete payment of the purchase price to us. The Customer assigns all claims against third parties resulting from damage or loss during transport to us in advance. We accept the assignment. This assignment and any payments from the transport insurance in accordance with Section 4.2 are effected solely on account of performance.

5. Prices and price change

5.1 The prices apply net ex works plus the value added tax applicable at the time of conclusion of contract.

5.2 We shall invoice the Customer additionally for packing materials at cost price. We shall invoice the Customer and the Customer shall pay for costs of waste disposal for packaging material that are unavoidably debited to us by law.

5.3 If the rate of value added tax increases between conclusion of contract and actual delivery, the agreed gross purchase price shall be increased accordingly.

5.4 If the Customer procures the merchandise from us at catalogue price and if the catalogue price is increased between conclusion of contract and actual delivery, the agreed purchase price shall be increased accordingly. Any agreed instalments shall be taken into account with regard to the increased purchase price too. If the purchase price agreement is not based on the catalogue prices, we are entitled to adjust the purchase price appropriately afterwards if the cost factors for the merchandise or for other agreed services rise not inconsiderably. If such a price adjustment leads to a considerable increase in price, the Customer is entitled to withdraw from the contract if he can demonstrably procure the merchandise at a considerably lower price and for the rest on the same terms elsewhere and we are not willing despite corresponding evidence to fulfil the contract at this price available elsewhere.

6. Terms of payment, offsetting and right of retention

6.1 Unless otherwise agreed payment shall be made without deduction of discount, expenses, taxes, charges, fees, or customs duties 30 days after the subject of the contract is made available and invoiced. Unless otherwise agreed, in the event of contracts worth over Euro 10,000.— payment shall be made promptly as follows: 1/3 after conclusion of contract, 2/3 30 days after delivery or report of readiness for shipping. We are entitled to invoice part deliveries.

6.2 The time of receipt in our bank account is crucial for fulfilment, timeliness of payment and generation of any discounts agreed. Payment by cheque shall be solely on account of payment. In the case of payment by cheque complete payment shall only be deemed effected on termination of our liability in connection with these papers after their final payment (including associated costs) by the Customer.

6.3 Even if a payment target is agreed, we can require immediate payment of all claims and/or make deliveries dependent on advance payment if there is any essential deterioration in the income or assets situation of the Customer or if such is to be expected in the near future on the basis of objective circumstances. In the event of granting of a period of respite or agreement on payment by instalments, all claims against the Customer shall become due immediately if the Customer finally refuses a payment or is more than 14 days in default with a due payment. This shall not apply if the amount in arrears is less than 10 % of the outstanding claims.

6.4 In the event of default of the Customer, subject to further claims we can claim interest on the outstanding amount of 5 per cent above the respective base interest rate, or 8% above the base interest rate if the Customer is a merchant. We can also invoice costs of Euro 3.- per reminder. The Customer is entitled to furnish evidence that we have not sustained any or only a much lower loss.

6.5 Offsetting by the Customer with opposing claims is ruled out unless these are undisputed or legally established claims of the Customer.

7. Warranty

7.1 The Customer is obliged to examine the merchandise delivered promptly and properly at his cost and to report any defects, wrong deliveries or short quantities to us promptly in writing. The report must be made within seven days after

receipt of delivery. Any concealed faults must be reported to us promptly in writing after their discovery.

7.2 Any quality defects in a part delivery shall not entitle the Recipient to reject the rest of the quantity concluded unless the Customer can furnish evidence that acceptance of just a part of the delivery is unreasonable for him under the circumstances.

7.3 Damage sustained due to external influences, incorrect treatment, poor operation, usual wear and tear or corrosion shall be excluded from the warranty.

The warranty for damage to heat exchangers is also ruled out if this damage is attributable to external influence, for instance to mechanical oscillations / vibrations from the structural surroundings and/ or pulsating energy components carried in the material flows involved in the heat exchange.

7.4 In the case of parts we have purchased from third parties and parts delivered unaltered to the Customer, the warranty claims of the Customer are restricted to assignment of our warranty claims. In the case of products manufactured by us the statutory regulations apply for the warranty claims of the Customer with the following proviso:

- in the case of infringements of obligation for which we are not responsible that do not consist in the delivery of defective objects or the production of defective work, the Customer is not entitled to withdraw from the contract,
- warranty claims for compensation of damage are limited in accordance with Section 9.

7.5 Warranty claims shall become statute-barred one year after handing over or transfer of risk.

If our confirmation of order provides for a longer warranty period, these claims shall become statute-barred on expiry of the said warranty period.

8. Retention of title

8.1 The merchandise delivered (subject to retention of title) shall remain our property up to complete payment of all claims from the business relations with the Customer existing at the time of the respective conclusion of contract. The merchandise delivered subject to retention of title shall moreover remain our property up to complete payment of our future claims. The Customer is obliged to collaborate in measures necessary to protect the property; in particular the Customer authorises us to have the retention of title entered or noted at the cost of the Customer in public registers, books or the like in accordance with the respective state laws.

8.2 The treatment or machining or conversion (hereinafter referred to uniformly as "processing") of the merchandise subject to retention of title shall be carried out at no cost to us, i.e. before the law we are manufacturers of the new property. In the event of processing of merchandise subject to retention of title and property of other owners by the Customer or his subcontractors, this shall at the same time be done free of charge for us and the Customer. If the Customer has reached agreements with the owners of other property involved in the processing in this respect, this shall also be done for these other owners. The processing shall be carried out with the proviso that we, the Customer and if appropriate the other owners shall be considered as joint manufacturers of the individual new property items at all times and at each degree of processing. We acquire joint ownership of the individual property items in the ratio of the pro-rated invoiced amount for respective processed merchandise subject to retention of title to the total value of all the property items produced. The same applies in the event of joining and mixing. Article 727 (2) of the Civil Code does not apply. Instead the ruling as set out above for processing applies. All fastenings of merchandise subject to retention of title with a plot of land shall only take place for a temporary purpose. In so far the Customer hereby grants us a corresponding right of use. If our ownership of merchandise subject to retention of title expires despite this due to any actual or legal circumstances, the Customer herewith transfers ownership of the resulting property items to us as of the time they are made. This applies in each case respectively in the event of several such processes following each other. In the case of processing of property of different owners described above and in the case of joining or mixing or mingling, the Customer transfers joint ownership to us in the amount

described above. We hereby accept the transfer of ownership. The Customer shall hold the property items in custody for us free of charge. In all the above cases the Customer shall acquire a corresponding vested right in the integrative property items produced or resulting that is strengthened to a full right like the vested rights in the merchandise subject to retention of title. The property items resulting from the processing like the property items transferred to us in whole or in part are deemed to be merchandise subject to retention of title in the meaning of these Terms and Conditions. The Customer shall provide us with all the information necessary to establish our portion of ownership.

8.3 Pledging or transfer by way of security of the merchandise subject to retention of title to third parties and assignment or pledging of vested rights to these are ruled out. We must be notified at once in the case of bailment and confiscation by third parties including assertion of pledge rights such as the rights of retention of hirers/landlords and in the event of other impairments of our securing rights. The costs of our intervention shall be for the account of the Customer in as far as we cannot recover them from the respective third party.

8.4 In the case of default in payment the merchandise subject to retention of title is to be handed out to us promptly on request. The same applies for any essential deterioration in the financial situation of the Customer.

8.5 If the Customer procures the merchandise subject to retention of title for the purpose of direct onward selling, the Customer is entitled to sell them in the regular course of business. If he procures them for the purpose of joining or processing them and then selling them on, he shall be entitled to sell the product in the regular course of business. If the merchandise subject to retention of title is not intended for direct onward selling or for processing with subsequent onward selling, onward selling without our previous consent is not admissible. The onward selling is also inadmissible if the resulting claim is covered by earlier dispositions of the Customer in favour of third parties, for example by a global cession.

The claims arising from the sale of merchandise subject to retention of title are assigned to us already with effect as of the time they occur in full with all incidental and securing rights. We hereby accept the assignment. If merchandise subject to retention of title is sold together with other merchandise, the assignment is effected to the amount of the sum which we invoiced the Customer for the merchandise subject to retention of title concerned on a pro-rated basis. In the event that we are only entitled to a co-right of ownership to the merchandise subject to retention of title, the assignment is made to the amount of the sum that corresponds to the value of the merchandise subject to retention of title contained in it that we invoiced to the Customer and that justifies the share of co-ownership. All assignments for us are first ranking. If the Customer includes the claims arising from onward sale of merchandise subject to retention of title in a current account relationship existing with his buyers, the respective recognised balance claims and the final balance claim are assigned to us in as far as they contain individual (part) claims that would have been assignable to us under the above provisions if they had not been claims to be included in the current account. The books of the Customer shall apply for ascertaining the first names and surnames of the third party debtors, their addresses and the amounts of the claims. Any other assignment, pledging or other burdening of these claims or parts of claims is inadmissible.

8.6 In as far as he fulfils his payment obligations to us the Customer can collect the claims for himself in the normal course of business. Assignment of the claim is ruled out. This shall not apply in the event of assignment for the purpose of collection of the claim in the way of factoring if at the same time the obligation of the factor to pay the equivalent of our claim directly to us as far as we still have claims against the Customer is substantiated.

8.7 In the event of default of payment of the Customer by more than one month, discontinuation of payments of the Customer, protesting of a cheque or bill at the Customer's (in as far as we are in any way the beneficiary of this cheque or bill), any bailment of merchandise subject to retention of title or

application for the opening of bankruptcy proceedings, total foreclosure proceedings or administration suits on the assets of the Customer before or outside a court of law, the right of the Customer to process or join/mix or sell merchandise subject to retention of title on and the right to collect claims shall expire. We are to be informed promptly of the above events. A list of the existing merchandise subject to retention of title is to be sent to us. The merchandise subject to retention of title is to be stored separately and at our request to be handed out promptly to us. We are also entitled to collect the claims assigned to us immediately. We are to be advised of the claims assigned promptly with details of their composition, amount, date of origin, and the first names, surnames and addresses of the third party debtors. This also applies for all other information necessary to determine and collect the claims. The Customer shall notify the third party debtors promptly of the assignment. The Customer shall issue us on request with a certificate of assignment. The monies received after expiry of the right to collect claims for claims assigned to us shall be accepted in trust up to the amount of all the claims secured and be forwarded on to us at once or be collected in a special account »For Refrigeration AG cash held in trust«. The Customer agrees with us that the cash accepted is our property. The Customer already assigns the claims to the account mentioned to us. We accept this assignment.

8.8 After withdrawal from the contract we are entitled to dispose freely of the merchandise taken back. The proceeds of sale/disposal will be credited to the Customer. Appropriate costs of collection, treatment and selling are to be deducted from the sales proceeds. The salaries of our staff deployed for this purpose are to be covered pro-rated. Costs of sales are to set at 25 % of the proceeds of sale. However at most the amount that an entrepreneur at our trading level would pay for the merchandise subject to retention of title taken back, with consideration given to its condition on taking back and its location, will be credited. In the case of merchandise manufactured by us, at most our direct cost price disregarding administration and distribution costs will be credited. The amounts credited will be offset against our claims until these are all satisfied.

8.9 The Customer is obliged to insure the merchandise subject to retention of title at his own cost to the customary extent at any rate against fire, storm, water and theft sufficiently at the replacement value and furnish evidence of the insurance cover to us on request. He herewith assigns to us the claims to which he is entitled against the insurance company and/or other third parties in connection with the merchandise subject to retention of title up to the amount of the share devolving on our merchandise subject to retention of title. We accept the assignment. The other provisions agreed within the framework of this retention of title apply accordingly.

8.10 In as far as our secured claims are secured by merchandise subject to retention of title and/or assignments or other securities not purely temporarily at a rate of more than 115%, we shall at the request of the Customer at our own choice release liens up to the aforementioned level. On assessing securities we shall proceed on the basis of the returns that can be realised on disposal of the securities. Under no circumstances, however, will a value higher than that which is to be credited to the Customer according to the above rulings in the event of taking back the merchandise or collection of the claims by us be applied. Claims are to be evaluated in accordance with the principles of good bookkeeping and if appropriate interest is to be paid. The Customer shall provide us promptly with the information necessary for such assessments on request.

9. Compensation

9.1 All cases of infringement of contract and their legal consequences and all claims of the Customer, irrespective of the legal grounds on which they are made, are governed conclusively in these terms and conditions. In particular all claims not expressly mentioned for compensation, abatement, cancellation of the contract or withdrawal from the contract are ruled out. The above exclusion of liability shall not apply:

- a) in the event of deliberate intent or gross negligence,

- b) for damage arising from injury to life, body or health based on negligent infringement of obligation by us or deliberate or negligent infringement of obligation by one of our statutory representatives or one of our agents,
- c) in accordance with the product liability law,
- d) in accordance with other compulsory regulations or
- e) because of infringement of essential contractual duties for which we are responsible.

The claim for compensation for the infringement of essential contractual obligations is, however, restricted to typical contractual, predictable losses in as far as deliberate intent or gross negligence is not involved or liability does not exist for deliberate injury of life, body or health. Liability on the basis of contractually typical, predictable loss is restricted where restriction of liability is admissible to the simple net price of the subject of the contract from the delivery or non-delivery of which the claims of the Customer result. Our liability for compensation is moreover limited to those amounts for which an appropriate employer's liability insurance customary in our line of business is covered. The liability for compensation is limited to the contract value in cases of minor negligence too. If the conditions for payment of benefit under the liability insurance exist, we are to pay any deductible under the insurance contract to the Customer.

9.2 We are not liable for losses/damage caused by our staff.

This does not apply

- in the case of loss/damage caused deliberately or grossly negligently by our organs or executive staff,
- in the case of deliberate or grossly negligent infringement of supervisory or selection duties
- of our organs or executive staff

9.3 The above exclusions or restrictions of liability do not, moreover, apply:

- for claims under the product liability law, in as far as liability is compulsory under this.
- in as far as we can take out insurance cover through an appropriate employer's liability insurance in our line of business.

9.4 Claims for damages (except in the case of deliberate intent by us or our executive employees) are excluded if they are not filed before a court of law within a period of three months after being rejected with a corresponding indication by us or our insurers. All and any claims for damages by the Customer (except in the case of deliberate intent by us or our executive staff) shall become statute-barred within one year of occurrence of the claim and knowledge of the Customer about his claim in as far as these conditions elsewhere or the law direct a shorter period of statutory limitation.

10. Place of fulfilment, venue, law applicable

10.1 Place of fulfilment for the payment is Switzerland and for the delivery of goods Geesthacht, Germany.

10.2 The venue for us and the Customer is Hamburg, Germany. We are, however entitled to prosecute the Customer at his place of residence/registration.

10.3 German material law applies exclusively to the exclusion of international private law, unified international law and especially under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

11. Data protection

We are entitled to process and store the data received about the Customer in connection with the business connection – even if these originate from third parties – in the meaning of the Data Protection Act.

Refrigeration AG
Status Novemer 2007

In the event of doubts as to the interpretation of the present Terms of Sale and Conditions of Delivery, the German text will prevail.