

TERMS AND CONDITIONS OF SALE

1 Quotations, orders and contract

- 1.1 A written quotation issued by the Supplier to the Purchaser is an offer to sell and overrides the Supplier's prevailing price list. A written quotation expires on the date specified as an expiry date. If no expiry date is specified, the written quotation expires 30 days after the date of the written quotation.
- 1.2 The Supplier may withdraw, revoke or vary a written quotation at any time prior to the Purchaser submitting an order which accepts the offer to sell comprised by the written quotation.
- 1.3 A contract for the supply of goods is made when the Purchaser communicates (by writing or conduct) to the Supplier its acceptance of a written quotation.
- 1.4 An order from the Purchaser on terms which are inconsistent with the terms of a written quotation, is an offer by the Purchaser to buy goods from the Supplier. A contract for the supply of goods is made if the Supplier communicates that it is prepared to supply the ordered goods upon the terms of these Conditions and the Purchaser accepts delivery of the ordered goods in which case the contract is deemed to have been made.
- 1.5 A contract made pursuant to clauses 1.3 or 1.4 is governed by any specific terms agreed by the Supplier and the Purchaser in writing, including in any quotation and these Conditions. To the extent that any inconsistency arises between:
 - (a) the terms of a quotation and clause 5.1 of these Conditions, the terms of the quotation prevail to the extent of the inconsistency;
 - (b) the terms of a quotation and any clause of these Conditions other than clause 5.1, the terms of these Conditions prevail to the extent of the inconsistency.
- 1.6 Where in the period between acceptance of a quote and delivery of the relevant goods, the Supplier incurs an increase in the cost of producing and/or delivering the goods, the Supplier reserves the right to increase the quoted price of those goods at any time prior to the delivery (a "price escalation"). The Purchaser shall accept any such price escalation.
- 1.7 The provisions of these Conditions prevail over any terms and conditions of trade of the Purchaser whether or not any inconsistency arises.

2 Specifications and Working Documentation

- 2.1 If the Purchaser's order refers to a Specification or Working Documentation then:
 - (a) the Purchaser represents and warrants to the Supplier that any such Specification or Working Documentation does not and any goods produced by the Supplier pursuant to such Specification or Working Documentation will not breach or infringe upon the rights or property of any third party including, without limitation, patent, design, copyright or other intellectual property rights and the Purchaser indemnifies the Supplier and must hold it harmless from and against any loss, damage, liability or cost suffered or incurred by the Supplier arising out of a breach by the Purchaser of the representations and warranties made by the Purchaser pursuant to this clause or otherwise;
 - (b) the Purchaser releases the Supplier from and waives any rights or causes of action it may at any time have had against the Supplier but for this release in relation to any fault or defect in any goods made pursuant to the Purchaser's Specification or Working documentation arising, whether directly or indirectly, out of the terms of the Specification or Working Documentation provided by the Purchaser to the Supplier; and
 - (c) the Purchaser indemnifies the Supplier and must hold it harmless from and against any loss, damage, liability or cost suffered or incurred by the Supplier attributable, whether directly or indirectly, to the terms of any Specification or Working Documentation provided by the Purchaser to the Supplier.
- 2.2 Subject to clause 1.5, unless otherwise stated on a quotation, goods will be supplied by the Supplier within the tolerances in regard to quantity, weight, dimension and chemical composition as specified in the relevant order or, if not specified, as is consistent with usual industry practice. Where the total mass or length of any item supplied includes a fraction of a tonne, the Purchaser must pay for that fraction on a pro-rata basis.

2.3 Notwithstanding any other provision of these Conditions, it is a term of the contract made between the Supplier and the Purchaser that the Supplier has discretion to refuse to supply goods or services to the Purchaser (without liability to the Purchaser) where:

- (a) goods or services are unavailable or insufficient for any reason whatsoever;
- (b) the Purchaser has failed to comply with terms on which the Supplier has agreed to provide credit to the Purchaser;
- (c) the Purchaser or a Related Corporation of it has breached a contract with the Supplier or a Related Entity of it; or
- (d) the Supplier considers it necessary or desirable to do so for any reason at all.

2.4 The Purchaser agrees that it does not rely on the skill or judgement of the Supplier in relation to the suitability of any of the goods for a particular purpose unless it has indicated that purpose in writing to the Supplier and the Supplier has acknowledged in writing that the goods will be fit for the particular purpose.

3 Delivery and risk

3.1 The Supplier will deliver goods to the Purchaser as follows:

- (a) the Supplier reserves the right to arrange transport by any means in its absolute discretion;
- (b) delivery will be made during working hours to the location agreed (the delivery point);
- (c) the Supplier or its transport contractor will deliver the goods as close (the drop spot) to the delivery point as, in the opinion of the Supplier or its transport contractor, it is safe or prudent to do so and delivery occurs and risk in the goods passes to the Purchaser when the delivery vehicle of the Supplier or its transport contractor arrives at the drop spot;
- (d) the unloading of goods at a drop spot is the Purchaser's responsibility at its own cost and risk but the Supplier or its transport contractor may, without the Supplier or its transport contractor incurring liability to the Purchaser, unload the goods at the drop spot if the Purchaser requests the Supplier to do so or is absent from the drop spot at the time the Supplier or its transport contractor wishes to unload the goods and the Purchaser releases and forever discharges the Supplier and its transport contractor from and against any claim, cause of action or liability arising out of the unloading of goods at the drop spot;
- (e) where the Purchaser attends the Supplier's premises to acquire goods the Supplier may, in its discretion:
 - (i) deliver the goods into or onto the Purchaser's vehicle in which case risk in the goods passes to the Purchaser and delivery is effected when the goods are set down in or on the Purchaser's vehicle; or
 - (ii) deliver the goods by setting them down along side the Purchaser's vehicle in which case risk in the goods passes to the Purchaser and delivery is effected when the goods are set down along side the Purchaser's vehicle notwithstanding that the Supplier's staff may at the request of the Purchaser assist the Purchaser to load the goods into or onto the Purchaser's vehicle.

3.2 Where the Supplier or its transport contractor enters the Purchaser's premises or the premises of a third party nominated by the Purchaser as a delivery point, the Purchaser:

- (a) releases the Supplier from any claim the Purchaser may at any time have had against the Supplier but for this release in respect of damage occasioned to the Purchaser's premises or injury to persons arising out of the delivery by the Supplier or its transport contractor of goods to such premises; and
- (b) indemnifies and holds the Supplier harmless from and against any loss, damage or liability suffered or incurred by the Supplier in respect of damage occasioned to the third party's premises or injury to persons arising out of the delivery by the Supplier or its transport contractor of goods to the premises of the third party except for and to the extent that such loss, damage or liability suffered or incurred by the Supplier does not arise out of the negligence or carelessness of the Supplier or its transport contractor.

- 3.3 A statement on an invoice or delivery docket given to the Purchaser by the Supplier as to the quantity, description, date and place of delivery of goods will, as between the Supplier and the Purchaser, be a conclusive statement and will bind the parties for all purposes.
- 3.4 If the Purchaser does not advise the Supplier in writing of any fault, damage or defect in goods or failure of goods to comply with the terms of a contract made pursuant to these Conditions within 48 hours of delivery:
- (a) the Purchaser is deemed to have accepted the goods and is deemed to agree that the goods are not faulty, damaged or defective and comply with a contract made pursuant to the terms of these Conditions; and
 - (b) the Purchaser releases and discharges the Supplier from and against any claims, actions, loss or liability relating to any fault, damage or defect in the goods or any failure of the goods to comply with a contract made pursuant to these Conditions.
- 3.5 If the Purchaser advises the Supplier in writing of a fault, damage or defect in goods or a failure of goods to comply with the terms of a contract made pursuant to these Conditions within 48 hours of delivery then the Supplier will, if in its opinion the Purchaser's advice is reasonable and the Purchaser has not used the goods, replace the goods that appear to be faulty, damaged or defective or not in compliance with the terms of a contract made pursuant to these Conditions and the Supplier will have no additional liability to the Purchaser.
- 3.6 Goods are not damaged or defective by reason only of the presence of rust, millscale or rolling seams.
- 3.7 Unless otherwise agreed by the Supplier and the Purchaser in writing, the Supplier will bundle or package goods the subject of an order in its discretion and the Purchaser releases and forever discharges the Supplier from any liability or claim arising out of such bundling or packaging by the Supplier.
- 3.8 The Supplier will not be liable for any loss incurred as a result of delay or failure to make any supply of goods or services or to observe any of these Conditions due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control, including but not limited to, any lack of production capacity or raw materials, strikes, lock-outs, labour disputes, fires, floods, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any semi-government authorities or embargoes. During the continuance of an event of force majeure the Supplier's obligations under these Conditions will be suspended.

4 Retention of title and PPSA

4.1 In this clause PPSA means the *Personal Property Securities Act 2009 (Cth)* and "Security Interest" means anything that is defined to be a "Security Interest under the PPSA.

4.2 If the Supplier determines that a contract for the supply of goods is or contains a Security Interest for the purposes of the PPSA, the Purchaser agrees, at its own cost, to do anything which the Supplier reasonably requires for the purposes of ensuring that the Security Interest is enforceable or enabling the Supplier to apply for any registration or give any notification in connection with the Security Interest so that the Security Interest has the priority required by the Supplier or otherwise enabling the Supplier to exercise rights in connection with the Security Interest.

4.3 The Purchaser agrees to pay or reimburse the reasonable costs of the Supplier in connection with any registration or perfection of or giving any notification in relation to, a Security Interest, or exercise of its rights in connection with a Security Interest.

4.4 The Supplier need not give any notice under the PPSA (including a notice of a verification statement) unless notice is required under the PPSA and cannot be excluded.

4.5 The Purchaser agrees that legal and equitable title to the goods is retained by the Supplier until the Supplier receives payment in full from the Purchaser for the goods, the services and all other goods and services supplied to Purchaser by the Supplier at any time. Prior to title in the goods passing to the Purchaser, the Purchaser:

- (a) holds the goods as bailee and fiduciary agent of the Supplier;
- (b) where the Purchaser processes the goods, either by using the goods to manufacture other goods or by incorporating the goods in or with any other goods, holds such part of the new goods (processed goods) on trust for the Supplier as bailee and fiduciary agent of the Supplier;

(c) must store the goods and such part of the processed goods separate from its own goods and those of any other third party in such a way as to clearly indicate at all times that the goods and such part of the processed goods are owned by the Supplier; and

(d) must ensure that, at all times, the goods and such part of the processed goods are properly stored, protected, readily identifiable and insured.

4.6 The Purchaser hereby agrees to accept this appointment as bailee and fiduciary agent of the Supplier.

4.7 The Purchaser may sell or deal in the ordinary course of business with the goods and such part of the processed goods provided that:

(a) any such sale or dealing is at arms' length and on market terms; and

(b) the Purchaser holds the proceeds of any sale of or dealing in the goods and such part of the proceeds of any sale of or dealing in the processed goods on trust for the Supplier in a separate identifiable account as the beneficial property of the Supplier and the Purchaser must pay such amount to the Supplier on demand.

4.8 For the purposes of this clause 4, "such part" means an amount equal in dollar terms to the amount owing by the Purchaser to the Supplier at the time the goods are used in the manufacture of, or incorporated into, the processed goods.

4.9 Notwithstanding any other provision to the contrary, the Supplier reserves the following rights in relation to the goods until all amounts owed by the Purchaser to the Supplier in respect of the goods and all other goods and services supplied to the Purchaser by the Supplier at any time are fully paid:

(a) legal and equitable ownership of the goods;

(b) to retake possession of the goods; and

(c) to keep or resell any of the goods repossessed.

4.10 In the event of a breach of this contract by the Purchaser including, without limitation, failure by the Purchaser to make payment for the goods by the date specified by the Supplier to the Purchaser, the Purchaser must return the goods to the Supplier immediately on demand. If the Purchaser does not return the goods to the Supplier on demand, the Supplier shall be entitled (without further notice) to enter upon the Purchaser's premises at any time to do all things necessary to recover the goods.

4.11 The Purchaser hereby grants full leave and irrevocable licence to the Supplier and any person authorised by the Supplier to enter upon any premises where the goods may for the time being be placed or stored for the purpose of retaking possession of the goods.

4.12 The Purchaser agrees that:

(a) it shall be liable for all costs, losses, damages, expenses or any other sums of money incurred or suffered by the Supplier (including consequential losses and damages) as a result of the Supplier retaking possession of the goods or otherwise exercising its rights under this clause; and

(b) it shall indemnify the Supplier for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against the Supplier in connection with retaking possession of the goods or the exercise by the Supplier of its rights under this clause, and the Purchaser shall repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.

5 Price and GST

5.1 The price of goods or services or both will be the Supplier's prevailing price at the time of delivery.

5.2 Where a party to these Conditions (supply maker) makes a Taxable Supply (within the meaning of the GST Act) under or in connection with these Conditions to another party to these Conditions (recipient) and the consideration otherwise payable for the Taxable Supply is not specifically stated to include GST, the supply maker will be entitled to recover from the recipient as an additional amount the amount of any GST payable on the Taxable Supply.

- 5.3 The amount of any cost recovery or compensation for costs under or in connection with these Conditions shall be reduced by the amount of any Input Tax Credits (within the meaning of the GST Act) available in respect of those costs.
- 5.4 A party to these Conditions will not be obliged to pay any amount in respect of GST to the other party unless and until a Tax Invoice (within the meaning of the GST Act) has been issued in respect of that GST.
- 5.5 In addition to payment of the price for goods, the Purchaser is responsible for and the Supplier may recover from the Purchaser:
- (a) taxes (other than income tax and GST), stamp duty or other statutory charges or levies whether State or Federal payable in relation to the supply of goods;
 - (b) the cost of delivery of goods including, without limitation, costs relating to long loads, wide loads, escorted loads, drop trailers, crane trucks (including associated personnel), particular dunnage requirements, palletising or crating of materials, early deliveries (at or around 7.00 am), delivery loads of less than 10 tonnes, delivery to non-metropolitan sites;
 - (c) the cost of providing materials necessary to manufacture goods in accordance with a specification or working documentation when such materials are not indicated on the specification or working documentation including, without limitation, hurdles, chairs, laps and bracing;
 - (d) costs incurred by the Supplier arising out of late notification by the Purchaser of a change to an agreed delivery schedule with such costs to include, without limitation, costs of double handling, storage of material, trailer hire and scheduling of production and delivery;
 - (e) storage charges where goods are not collected immediately upon being made available for collection at the Supplier's premises;
 - (f) demurrage costs or charges incurred by the Supplier for attendance at a delivery point after the expiration of the first three quarters of an hour such charges to be calculated at master carrier rates;
 - (g) legal costs and disbursements on an indemnity basis incurred by the Supplier in relation to a breach of these Conditions by the Purchaser.
 - (h) all costs, charges, expenses or any other outgoings incurred by the Supplier with respect to any variation by the Purchaser;
 - (i) all costs or charges incurred by the Supplier with respect to the recovery or return of goods from the Purchaser (including re-stocking charges) whether or not such recovery or return of goods occurs in relation to any breach of these Conditions; and
 - (j) the cost of any testing or inspection of goods, or testing or inspection of products or materials required by the Purchaser to be used in relation to the manufacture of goods.

6 Payment and credit terms

- 6.1 Unless the Supplier has agreed to extend credit to the Purchaser, payment for goods must be made by the Purchaser in immediately available funds on or immediately prior to delivery of the goods.
- 6.2 Unless otherwise agreed by the Purchaser and the Supplier, the Supplier will be entitled to deliver the goods in one or more instalments. Where delivery of the goods is effected by way of part delivery, the Supplier will be entitled to invoice the Purchaser for pro-rata progress payments in respect of goods delivered.
- 6.3 Where the Supplier has agreed to extend credit to the Purchaser, the Supplier will submit an invoice to the Purchaser (including, without limitation, goods delivered in part fulfilment of any order) and the full amount of the invoice together with any additional charges (if any) must be paid by the Purchaser to the Supplier by no later than the date which the Purchaser and the Supplier agree to in writing and in any event no later than commercial 30 days, i.e. 30 days after the end of the month in which the Supplier's invoice was rendered.
- 6.4 The Purchaser must pay the Supplier on demand default interest at the rate prescribed from time to time by the *Penalty Interest Rates Act 1983 (Vic)* on all overdue amounts owed by the Purchaser to the Supplier which interest will be calculated daily and will be payable together with the overdue amount. All payments made by the Purchaser will be first applied to the accrued interest.

- 6.5 The Purchaser must not retain or withhold any money owing to the Supplier notwithstanding any breach or alleged breach by the Supplier of these Conditions including the supply of allegedly faulty or defective goods. The Supplier expressly disclaims any right of the Purchaser to set off amounts due or alleged to be due from the Supplier to the Purchaser against amounts due or alleged to be due from the Purchaser to the Supplier under these Conditions.
- 6.6 If the Purchaser breaches a provision of these conditions including, without limitation, a provision relating to the payment of money or if the Purchaser, being a natural person, is the subject of any personal insolvency event including, without limitation, arising out of the Purchaser committing an act of bankruptcy or if the Purchaser, being a company, has a receiver, receiver and manager, official manager, trustee, administrator, other controller (as defined in the *Corporations Act 2001*) or similar official appointed or steps are taken for such appointment over any of the assets or undertaking of the Purchaser or if the Purchaser suspends payment of its debts generally or is or becomes unable to pay its debts when they are due or is presumed to be insolvent under the *Corporations Act 2001* or if the Purchaser ceases or threatens to cease to carry on business or any guarantee or security given to the Supplier in relation to the Purchaser is purported to be revoked or asserted to be unenforceable then the Supplier may, without limiting any other rights it may have, do any or all of the following things;
- (a) withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all moneys owed to the Supplier by the Purchaser;
 - (b) terminate without the Supplier incurring liability to the Purchaser any contract in force between the Supplier and the Purchaser for the sale or supply of goods or services or both and, without limitation, withhold any deliveries of goods or performance of services pursuant to any purchase order accepted by the Supplier.
 - (c) suspend performance under or terminate, in either case without the Supplier incurring liability to the Purchaser, any contracts in force between the Supplier and the Purchaser, not being contracts for the sale or supply of goods.
- 6.7 The Purchaser as beneficial owner charges in favour of the Supplier all of its interest in all of the present and future real property of the Purchaser as security for the due and punctual payment of all debts and monetary liabilities owed by the Purchaser to the Supplier pursuant to a contract on or including the terms of these Conditions. The Purchaser consents to the Supplier lodging a caveat to note its interest. Upon demand by the Supplier, the Purchaser agrees to immediately execute a mortgage on terms satisfactory to the Supplier to more particularly describe the security interest conferred by this clause. Should the Purchaser fail within a reasonable time of such demand to execute such mortgage then the Purchaser irrevocably appoints the Supplier as its attorney with authority to do on its behalf any thing that it may lawfully authorise an attorney to do including, without limitation, to make, sign, execute, seal and deliver any document and to take possession of, use, sell or otherwise dispose of any real property of the Purchaser.

7 Limiting liability

- 7.1 These Conditions set out the entire agreement between the parties in relation to their subject matter. The terms of the United Nations Convention on Contracts for the International Sale of Goods 1980 (the Vienna Convention) and all other terms or conditions in relation to the subject matter of these Conditions, whether implied by use, statute or otherwise, are expressly excluded.
- 7.2 No statement or recommendation made or advice, supervision or assistance given by the Supplier, its employees, agents, transport contractors or representatives whether oral or written must be construed as or constitutes a warranty or representation by the Supplier or a waiver of any clause in these Conditions. The Supplier is not liable for loss or damage arising directly or indirectly from any act or omission to act arising directly or indirectly from any such statements, recommendations, advice, supervision or assistance.
- 7.3 Subject to clauses 3.5 and 7.4, the Supplier is not liable for any loss or damage, however caused (including, but not limited to, by the negligence of the Supplier), suffered by the Purchaser in connection with a supply of goods or services under these Conditions.
- 7.4 If the *Trade Practices Act 1974* or any other legislation implies a condition or warranty into these Conditions in respect of goods or services supplied, and the Supplier's liability for breach of that condition or warranty may not be excluded but may be limited, clause 7.3 does not apply to that liability and instead the Supplier's liability for any breach of that condition or warranty is limited to:
- (a) in the case of a supply of goods, the Supplier doing any one or more of the following (at its election):

- (i) replacing the goods or supplying equivalent goods;
 - (ii) repairing the goods;
 - (iii) paying the cost of replacing the goods or of acquiring equivalent goods;
- (b) in the case of a supply of services, the Supplier doing either or both of the following (at its election):
- (i) supply the services again;
 - (ii) paying the cost of having the services supplied again.

7.5 Notwithstanding any other provision of these conditions, the Supplier is not liable to the Purchaser for any indirect, special or consequential loss or damage suffered or incurred by the Purchaser arising out of a breach by the Supplier of a contract made pursuant to these Conditions or a negligent act or omission of the Supplier or a breach of a statutory duty or obligation by the Supplier. The phrase "indirect, special or consequential loss or damage" is deemed to include the following: economic loss, loss of opportunity, loss of profit or revenue, loss or damage in connection with claims against the Purchaser by third parties, liquidated sums or liquidated damages.

8 Miscellaneous

- 8.1 Nothing in these Conditions is intended to exclude, restrict or modify rights which the Purchaser may have under the *Trade Practices Act 1974* or any other legislation which may not be excluded, restricted or modified by agreement.
- 8.2 A party waives a right under these Conditions only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of the breach of a term of these Conditions does not operate as a waiver of another breach of the same term or any other term.
- 8.3 If a provision in these conditions is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must, to that extent, and in that jurisdiction, be treated as deleted from these Conditions. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction.
- 8.4 The Supplier may assign or otherwise deal with the benefit of any contract made pursuant to these Conditions without the consent of the Purchaser.

9 Jurisdiction

The law of the state or territory in which the Supplier manufactures goods for the Purchaser is the proper law of these Conditions. The parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Victoria.

10 Interpretation

In these Conditions:

Conditions means these terms and conditions;

Goods means goods the subject of an order;

GST means the tax payable on Taxable Supplies within the meaning of the GST Act;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;

Purchaser means a person who makes a contract with the Supplier on the terms of these Conditions;

Related Corporation has the meaning given to the term "related body corporate" in section 50 of the *Corporations Act 2001*;

Services means services supplied by the Supplier to the Purchaser in relation to goods the subject of an order, which has been accepted by the Supplier;

Specification includes metallurgical properties, chemical formulae, ingredients, architectural drawings, engineering drawings or other plans and accompanying schedules as varied or amended from time to time;

Supplier means Trent Refrigeration Pty Ltd (ACN 006 856 622);

Variation means any modification, amendment or change to the terms of an order submitted by the Purchaser (whether or not such order has been accepted by the Supplier) including, without limitation, in relation to scheduling and re-scheduling, loading requirements, delivery times or delivery sites;

Working Documentation means architectural drawings, site drawings, structural drawings, construction drawings and reinforcement schedules or any other document or operational information provided by or on behalf of the Purchaser to the Supplier for the purpose of the transactions contemplated by these Conditions; and

Working Hours means between 7.00 a.m. and 5.00 p.m., Monday to Friday (inclusive) excluding public holidays.