



STANDARD TERMS AND CONDITIONS OF TRADE

1. Definitions

"we", "us" and "our" means Ocean Air Refrigeration Ltd, or any of its agents or employees.

"you" and "your" means the customer and/or the purchaser, any person acting on behalf of and with the authority of the customer and/or the purchaser, or any person purchasing goods from us.

"goods" means those goods and/or services are identified in any sales orders, invoices, order forms or other documents or statements describing the goods and/or services supplied (or to be supplied) by us to you.

2. Terms of Supply of Goods

- 2.1. We will supply goods on these standard terms and conditions (**Terms**) unless we agree to a variation in writing. Upon emailing or text messaging confirmation, or signing a sales order, you are deemed to have accepted these Terms. In the event of any inconsistencies with these Terms in your enquiries, orders or confirmations, these Terms will prevail.

3. Orders

- 3.1. Acceptance of an order by us is subject to availability of the goods.
- 3.2. You may not cancel or vary an order once it has been placed or confirmed unless agreed in writing by us. In the event that we accept a cancellation of an order, we may charge a handling fee of up to 10% of the price of the goods plus any and all costs incurred by us to time of cancellation.

4. Price and Payment

- 4.1. All quotes, estimates and pricing given by us, except if expressly stated otherwise, are estimates only and are based on rates and charges in effect at the date of issue. Any increase in the costs of any items (including change in currency exchange rates) affecting the cost of supply, production and/or delivery of the goods will be added to the price of the goods payable by you. Quotes and estimates may be subject to such further terms expressly set out in the quote or estimate.
- 4.2. You must pay the price for the goods and other relevant costs as indicated on the email, sales order, invoice, order form or other document or statement issued (including via email) by us in New Zealand dollars.
- 4.3. If credit has been extended by us to you, payment is due within seven (7) days following the issue of our invoice to you, or at other times as may be agreed in writing by us. Payment for trade customers is on the 20th of the month following the month the invoice is issued.
- 4.4. If we at any time deem your credit to be unsatisfactory, we may immediately terminate your contract or any credit arrangement and require you

to pay the price on delivery of the goods.

- 4.5. All costs and expenses of, or incurred by us as a result of termination and recommencement of any credit arrangement are payable by you upon demand.
- 4.6. We may charge interest and collection costs on any monies which are overdue under the contract, commencing on the due date until the date of actual payment. The interest rate will be the then current overdraft interest rate charged by our bank plus 2% per month.
- 4.7. You agree to pay on demand all costs (including commission and legal fees as between solicitor and own client and any other costs) incurred by us or our agents relating to the recovery of any amounts payable by you to us.
- 4.8. All payments by you must be made in full and without any deduction or right to set off or counterclaim. You agree that all monies which we may owe you on any account whatsoever may, at our option, be set off against payments due by you to us.
- 4.9. Unless otherwise stated all prices exclude GST and other taxes and duties, which, if payable, are payable by you.

5. Delivery

- 5.1. Delivery of the goods is deemed to be made:
- when you or your agent is given possession of the goods at our premises or elsewhere (loading is then at your risk);
 - (If we effect delivery for you) when the goods arrive at your premises (unloading is then at your risk); or
 - (If we install the goods for you) when the installation of goods is deemed to be completed by us.
- 5.2. On delivery, the goods are at your sole risk, and with effect from the time of delivery, you will have in place all risks insurance to cover both your interest as bailee of the goods and our interest as owner of the goods under clause 6.1, until all monies owing for the good have been received by us.
- 5.3. We may choose the carrier and the method of transport, unless otherwise agreed by us in writing. We may choose to deliver by installments and may treat each delivery as a separate contract. Should we fail to deliver or make defective delivery of one or more installments, this will not entitle you to repudiate the main contract.
- 5.4. If we believe that you may not make any payment when due, then we may suspend or cancel any delivery.
- 5.5. Any delivery date agreed by us is approximate only, and no delay in delivery will entitle you to cancel your order for the goods.
- 5.6. Part of our quality control process is to ensure that immediately before a delivery of goods, the goods comply with the relevant order and are appropriately packaged for delivery. Immediately upon delivery of an order, the goods must be inspected for you and if any of the goods are damaged, we must be advised by you within 2 working days so that a claim for damaged goods can be made against the carrier.

6. Retention of Title

- 6.1. Title of ownership (both legal and equitable) in all goods delivered to you does not pass (and you are a bailee only in respect of those goods) until payment in full is made for all such goods and other goods supplied by us to you. Until property has passed, you will store all goods in such a way that they are clearly identifiable as our property.
- 6.2. Until you have paid us in full for all goods supplied, you may not sell, dispose of or charge the goods and must hold or deal with the goods for and on behalf of us. However, if the

goods are sold, in the ordinary course of your business, prior to property passing to you, the proceeds of that sale are held by you on trust for and on behalf of us.

- 6.3. Prior to you acquiring full property in the goods we or our agents may at any time enter upon any land, premises or property where we believe such goods may be to view and inspect them, and if you have not paid for them in full retake possession of the goods. You will indemnify us on demand in respect of any costs or liabilities incurred by us in exercising our rights under this clause. Until title in the goods has passed to you, you shall keep the goods free of any security interest other than any security interest held by us, and you will not permit the goods to become an accession as defined in the Personal Properties Security Act 1999 (**PPSA**).

7. Personal Property Securities Act 1999

- 7.1. You acknowledge that the contract creates a security interest (as that term is defined in the PPSA in the goods and for avoidance of doubt, the proceeds of sale of the goods. You will, if requested by us, sign any documents (including any new agreements), provide all necessary information and do anything else required by us to ensure that the security interest is a perfected purchase money security interest (as that term is defined in the PPSA).
- 7.2. Until payment to us has been made in full for the goods, you acknowledge and agree that in relation to goods that are inventory, you will not allow any non-purchase money security interest to arise in respect of the goods unless we have perfected our purchase money security interest prior to you taking possession of the goods.
- 7.3. If the goods are for your business use you agree, (to the extent permitted under the PPSA and unless we agree by notifying you in writing), that you will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation, you will have no rights under sections 114(1) (a) and 116 (to receive notice of sale and statement of account), sections 121(2) and 122 (to receive any proposal or object to any proposal to retain the goods), sections 125 and 129 (relating to removal of accessions), and sections 132 and 133 (to redeem the goods or reinstate the contract).
- 7.4. You waive your right under the PPSA to receive a copy of any verification statement or financing change statement (as those terms are defined in the PPSA).

8. Warranties and Liability

- 8.1. Nothing in these terms and conditions excludes any statutory rights you may have under the Consumer Guarantees Act (**CGA**).
- 8.2. You agree that where you acquire goods for the purposes of a "business" (as that term are defined in the CGA), then to the fullest extent permissible by law you agree that the CGA and any other applicable consumer law is hereby excluded.
- 8.3. Subject to clauses 8.1 and 9, all conditions, warranties, descriptions, representations and statements as to fitness or suitability for any purpose, workmanship, tolerance to any conditions, merchantability or otherwise, express or implied, are expressly excluded to the fullest extent permitted by law.
- 8.4. To the fullest extent permitted by law, we have no liability (whether statutory, in contract or tort (including negligence), or howsoever) to you or any of your agents or employees for any physical, or special damage, direct loss, indirect loss, economic loss of any kind (including loss of profits

and expectation loss), consequential loss or any other loss or costs (including legal and solicitor/client costs) caused or contributed to by us or any of our agents or employees in respect of any goods or services supplied or any quotation or estimate given. Without limiting the foregoing, we have no responsibility or liability for any dangerous good(s) or any contaminant, ozone depleting or hazardous substance in or emitted by any goods.

- 8.5. We will not be liable to you, or to any other person, for any loss or damage:
- caused by any delay in delivery however that delay is cause;
 - arising directly or indirectly from the goods or their use, any services provided by us, or any breach by us of any of our obligations under these terms and conditions.
- 8.6. If we are ever liable to you, or any other person, and we cannot rely on the exclusions of representations, warranties or liabilities set out above, then our liability is in all cases limited to the amount of the price of the goods.

9. Limited Express Warranty

- 9.1. We warrant that all new goods are of merchantable quality and this warranty remains in force for the period of twelve (12) months immediately following delivery (**Warranty**).
- 9.2. No claim may be made by you under the Warranty unless:
- the claim is received by us within 7 days of the defect becoming apparent;
 - the claim is confirmed in writing and accompanied by proof of purchase; and
 - we are given a reasonable opportunity to inspect and verify the claim.
- 9.3. Our liability under the Warranty is, in all cases, limited to the amount of the price of the goods in respect of which the Warranty is given. We may perform the Warranty by doing any one of the following at our option:
- replace the goods, or supply equivalent goods;
 - repair the goods or workmanship; or
 - give a credit for or refund the price.
- 9.4. The conditions applicable to the Warranty are:
- the Warranty shall not cover any defect or damage caused or partly caused by:
 - a failure on your part to properly maintain any goods;
 - a failure on your part to follow any instructions or guidelines we provide;
 - any use of any goods other than for any application specified on a quote, estimate or order form or verbally by us;
 - the continued use of any goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user;
 - fair wear and tear, any accident or act of God.
 - the Warranty shall cease and the in no circumstances shall we be liable under the terms of the Warranty if the workmanship is repaired, altered or overhauled without our prior written our consent.
 - in respect of all claims we shall not be liable to compensate you for any delay in either replacing or remedying the workmanship or in properly assessing your Warranty claim.
- 9.5. **The Warranty applies only to goods delivered and/or installed us.** We exclude all liability for loss, damage or defects in relation to the goods, your vessel any or other item caused by parts, fit-outs, installations or any other item

used and/or installed by you or a third party. We have no liability to you or any other party for loss or damage to the goods caused by circumstances outside of our control (including, but not limited to, electrolysis, flooding and misuse).

10. Credit Application – Disclosure and Content

- 10.1. You authorise us to collect, retain and use any information about you that we regard as necessary to our credit enquiry and control purposes, from any third party. Accordingly, any person or company is authorised by you to provide us with such information as we may require in response to our credit enquiry. Any information collected may be used for other purposes in addition to that of credit enquiry.
- 10.2. You further authorise that we may furnish to any party, details of any credit application and any subsequent dealings that you may have with us, as a result of such credit application being actioned by us.
- 10.3. You have rights under the Privacy Act 1993 to access and correct any information we may hold about you.

11. Goods Return

- 11.1. No goods will be accepted for return by us without our specific approval. All goods shall be returned un-used, in un-damaged condition, original packaging and all freight pre-paid by you.
- 11.2. A re-stocking fee of 20% of the invoice value, plus any costs for damage repairs, will be charged upon the return of the goods to us. Goods supplied to special requirements will not be accepted for return.

12. General

- 12.1. These Terms and any sales orders, invoices, order forms or other documents or statements issued by us describing goods delivered and/or payment terms (together, the **Contract**) are the entire agreement between us and you.
- 12.2. Neither party can vary or replace the Contract and it will be a condition of us continuing to supply goods to you that you agree to sign any variation or replacement of this Contract where required under the terms of this contract.
- 12.3. There shall be no waiver of any of these Terms unless agreed in writing by the director of Ocean Air Refrigeration Ltd.
- 12.4. You may not assign all or any of your rights or obligations under the Contract without our prior written consent.
- 12.5. We are not bound by any error or omission on any invoice, sales order, order form or other document or statement issued by us.
- 12.6. These terms and conditions are governed by the laws of New Zealand. Any disputes shall be referred to the courts of New Zealand.