



## Terms and Conditions

### 1.0 DEFINITIONS

- 1.1 'we', 'us' and 'our' shall mean and refer to Process Refrigeration (NZ) Limited, or any agents or employees thereof.
- 1.2 'you' and 'your' shall mean the Customer, any person acting on behalf of and with the authority of the customer, or any person purchasing goods from us.
- 1.3 'Goods' shall mean all goods, chattels, or services, provided by us to you, and shall include without limitation the supply and/or installation and/or repair of parts or supply of any work and all labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of goods by us to you.
- 1.4 'Price' shall mean the cost of the goods as agreed between us and you subject to clause 4 of this contract.

### 2.0 ACCEPTANCE

- 2.1 Any instructions received by us from you for the supply of goods shall constitute acceptance of the terms and conditions contained herein. These terms and conditions shall apply to future orders you make with us and any terms or conditions to the contrary of these terms and conditions shall not apply.
- 2.2 None of our agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by us in writing nor are we in any way bound by any such unauthorised statements.

### 3.0 COLLECTION AND USE OF INFORMATION

- 3.1 You authorise us to collect, retain and use any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by us to any other party.
- 3.2 You authorise us to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where you are a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes for the Privacy Act 1993.

### 4.0 PRICE

- 4.1 All prices are exclusive of GST, freight costs, installation and any other applicable taxes and duties and may be subject to increase due to exchange rate fluctuations and such items and increases are payable in addition to the price.
- 4.2 Where no price is stated in writing or agreed to orally the goods shall be deemed to be sold at the current amount as such goods are sold by us at the time of the contract.
- 4.3 Charges for work such as installation, repair, manufacture are based on wages, related costs and general costs existing at the date of the contract and we reserve the right to increase the charges set out to allow for any increase in operating costs such increase to be notified in writing with the amount and date from which the increase shall apply. Quotations for such charges apply only at the date of contract and are likewise subject to change by notification.
- 4.4 The price may be increased by the amount of any reasonable increase in the cost of supply of the goods that is beyond the

control of us between the date of the contract and delivery of the goods.

### 5.0 PAYMENT

- 5.1 Payment for goods shall be made in full on or before the 20<sup>th</sup> day of the month following the date of the invoice. Interest may be charged on any amount owing after the due date at the rate of 2% above our current overdraft rate.
- 5.2 Any expenses, disbursements and legal costs incurred by us in the enforcement of any rights contained in this contract shall be paid by you, including any reasonable solicitor's fees or debt collection agency fees.
- 5.3 Receipt of a bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

### 6.0 QUOTATION

- 6.1 Where a Quotation is given by us;
  - 6.1.1 it is valid for thirty days from the date of issue; and
  - 6.1.2 it shall be exclusive of Goods and Service Tax unless specifically stated to the contrary; and
  - 6.1.3 may be withdrawn at any time before acceptance; and
  - 6.1.4 applies only to the cost of supply of equipment; and
  - 6.1.5 is upon the basis that reasonable access to the property or premises is available where it includes the cost of delivery to the property or premises. If such access is not available an extra charge for handling will be added.
- 6.2 Documents forming part of Quotations and containing illustrations, drawings or weights and dimensions or other similar information are approximate only unless expressly warranted as correct. We reserve our proprietary rights and copyright in and to estimates and drawings which shall not without our consent be made available to any third party.
- 6.3 Any performance figures by us are based on our estimates which we expect to obtain during testing. Unless guaranteed in writing no undertaking or warranty is given that such figures will be obtained and our liability in that event shall be strictly limited in the terms of the written guarantee.
- 6.4 Unless we have measured the structure at your request for the purposes of this Quotation the sizes in the Quotation are based upon the specifications supplied by you and additional costs arising from any inaccuracy of such specification shall be payable by you.
- 6.5 We are not responsible for installation or commissioning of the goods supplied nor for any ancillary services such as other pipe work necessary for the operation of the goods unless expressly agreed in writing.
- 6.6 Where goods are required in addition to the Quotation the customer agrees to pay for the additional cost of such goods.

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## **7.0 RISK**

- 7.1 The goods remain at our risk until the delivery to you, but when title passes to you pursuant to clause 9.1 of this contract the goods are at your risk whether delivery has been made or not.
- 7.2 Delivery shall be made at the place indicated by you and if no place shall be indicated then delivery shall be made at your premises. If you fail or refuse to take or accept delivery then the goods shall be deemed to be delivered when we were willing to deliver them or when 14 days have elapsed after the date of notification that the goods are ready for dispatch in accordance with this contract.
- 7.3 The time for delivery shall not be an essential term of this contract unless you give written notice to us making time of the essence.
- 7.4 Where we deliver goods to you by instalments and we fail to deliver one or more instalments you shall not have the right to repudiate the contract but shall have the right to claim compensation as a severable breach.

## **8.0 AGENCY**

- 8.1 You authorise us to contract either as principal or agent for the provision of goods that are the matter of this contract.
- 8.2 Where we enter into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and you agree to pay any amounts due under that contract.

## **9.0 TITLE**

- 9.1 If the goods are ascertained and in a deliverable state, title in the goods passes to you when you have made payment for all goods supplied by us.
- 9.2 Where you have not paid for any goods in your possession property in such goods shall remain with us and:
- 9.2.1 the goods shall be held by you as bailee; and
- 9.2.2 if the goods are attached, fixed or incorporated into any property of yours or any third party, title in the goods shall remain with us until you have made payment for all goods and where those goods are mixed with other property so as to be part of or a constituent of any new goods, title to these new goods shall be deemed to be assigned to us as security for the full satisfaction by you of the full amount owing between us and you.
- 9.3 You give Irrevocable authority to us to enter any premises occupied by you, at any reasonable time, to remove any goods not paid for in full by you. We shall not be liable for costs, damages or expenses or any other losses incurred by the customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever.

## **10.0 LIABILITY**

- 10.1 Except as otherwise provided by statute we shall not be liable for;
- 10.1.1 any loss or damage or injury of any kind whatsoever whether suffered or incurred by you or another person whether such loss or damage or injury arises directly or indirectly from goods or services or advice provided by us to you and without limiting the generality of the foregoing of this clause we shall not be liable for any consequential loss or damage or injury of any kind including without limitation any financial loss; and
- 10.1.2 for any loss, damage or injury beyond the value of the goods provided by us to you in contract, or in tort, or otherwise; and
- 10.2 You shall indemnify us against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of your negligence or the infringement of any letters patent, trademark, trade name, copyright or other

similar right to which any specification or information supplied by you might be subject or otherwise by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with the goods or this contract.

All claims must be received by us within 14 days of either delivery of the goods or when you should have become aware of facts which might give rise to a claim.

## **11.0 CONSUMER GUARANTEES ACT**

- 11.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire goods or services from us for the purposes of a business in terms of section 2 and 43 of that Act.

## **12.0 WARRANTY**

- 12.1 No representation, condition, warranty or promise expressed or implied by law or otherwise applies to goods and services except where expressly stated in this contract.
- 12.2 We will pass on to you the benefit of any warranty given by our suppliers or a third party such as the manufacturer in respect of materials.

## **13.0 CANCELLATION**

- 13.1 We shall, without any liability and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods to you if you fail to pay any money owing after the due date or if any of the following occur:
- you commit an act of bankruptcy as defined in section 19 of the Insolvency Act 2006; or
  - you receive notice of any winding up proceedings against you pursuant to the Companies Act 1993; or
  - you are put into receivership; or
  - you receive notification that any other person intends to put you into receivership; or
  - you appoint a liquidator by directors' / shareholders' resolution or a liquidator is appointed.

## **14.0 RETURN OF GOODS**

- 14.1 No claim relating to delivery of goods shall be considered unless made within 72 hours of delivery.
- 14.2 The customer shall be deemed to have received the goods unless the customer notifies us otherwise within 2 weeks of delivery of the goods to the customer.
- 14.3 Except as detailed in clause 14.4 below, if the goods are not accepted according to clause 14.2 of this contract, the customer upon obtaining prior approval from us shall pay for the delivery of the returned goods to us, whereby the customer shall be entitled to a credit for any such goods, less a 15% restocking fee, with this credit being calculated only on the original base purchase price of the goods, and excluding any freight costs.
- 14.4 Indented goods may not be accepted for return. If they are accepted, any restocking fee applied may include costs associated with returning the goods to our supplier.

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## **15.0 MISCELLANEOUS**

- 15.1 You shall not assign all or any of its rights or obligations under this contract without our written consent.
- 15.2 We shall not be liable for delay or failure to perform our obligations if the cause of the delay or failure is beyond our control.
- 15.3 Failure by us to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations we have under this contract.
- 15.4 The law of New Zealand shall apply to this contract except to the extent expressly negated or varied by this contract.
- 15.5 Where the terms of this contract are at variance with the order or instruction from you, this contract shall prevail.
- 15.6 In the event of a difference or dispute arising between the parties in relation to any matter herein, any difference or dispute will be resolved by arbitration and in accordance with the Arbitration Act 1996 and its amendments and if the parties are unable to agree on a sole arbiter or umpire, then same shall be nominated by the President of the New Zealand Law Society.
- 15.7 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.8 We shall not be liable to you for any delay or failure to perform our obligations due to a matter beyond our control.
- 15.9 You acknowledge that all signs and stickers remain our property and that we have the right to remove them upon termination of the contract.