

GRANTS REFRIGERATION

TERMS and CONDITIONS

1. DEFINITIONS

"Supplier," means Grant's Refrigeration or any trading name they may adopt from time to time. Purchaser, means the person, firm or corporation to which or to whom (or to whose business name or alias) the communication overleaf is addressed and

where, in accordance with the foregoing, the Purchaser is more than one person, any reference or any obligation of the "Purchaser" shall be construed as an obligation of all such legal persons, jointly and severally

"purchase price" means in the event of a contract between the Supplier and the Purchaser being entered into and subject to claus 5 the price quoted overleaf.

"contract goods" means the goods specified overleaf in the "Order details " section and in any Schedules attached hereto and which are to be purchased by the Purchaser and sold by the Supplier under this Agreement, subject to any alteration agreed in writing by the Supplier and the Purchaser

"this Agreement " means the contract between the Supplier and the Purchaser for the sale and the purchase of the contract goods incorporation these Terms and Conditions.

2. GENERAL

Any utilisation by the Supplier of any order number, or similar reference of the Purchaser will be solely for the purpose of identification for the convenience of the Purchaser and is not and will not be intended to imply acceptance of any terms and conditions accompanying such reference or in which such reference is embodied. Unless expressly accepted in writing by the Supplier no variation or waiver of or addition to the said Terms and Conditions shall form part of any contract between the Supplier and the Purchaser.

3. WARNINGS TO THIRD PARTIES

The Purchaser undertakes to comply with and to communicate to any person who might be imperilled or suffer loss or damage through ignorance thereof any warnings or similar advise in relation to the contract goods and the Purchaser hereby indemnifies the Supplier (on the basis of full restitution) against any claim by or on behalf of any such person to which it would have been a total or partial defence that such warning or other information had, in terms comprehensible to a layman, been timeously communicated to such person or to a person having charge of such person.

4. PRICE AND PAYMENT

a) The purchase price shall be subject to alteration in any of the following circumstances:-

b) In the event of an increase in the cost of supplies to the supplier

c) In the event of the Purchaser requesting alterations of any aspect of the order.

d) In the event of suspension of work by the Supplier which is due to the Purchaser's instructions of lack thereof

5..

a) Unless otherwise stipulated payment of invoices issued by the Supplier to the Purchaser shall be made no later than the date

specified in the "Due Payment Date"box overleaf (the "due date"). If payment in full is not made by the due date then the

Company will be entitled to interest on the full amount due at the rate of 5 % above the Bank of Scotland Base Rate from the due date until payment in full (including interest is made)

b) Payment in full of each invoice must be made, whether before or after the due date, in one instalment and the Purchaser

will not be entitled to withhold payment in full or in part because of any dispute.

c) In the event of payment in full not being made by the due date and without prejudice to any other rights or remedies which

may be available to it the Supplier reserves the right to terminate or suspend any or all deliveries and outstanding obligations, including the cessation or manufacture of further contract goods, to the Purchaser and to render accounts for payment in full for all deliveries made and all outstanding amounts due to the Supplier whether under this or any other contract between the Supplier and the Purchaser

d) In the event of the payment in full not being made by the due date the Supplier reserves the right to claim damages for any

or all losses incurred as a result of such failure.

e) In the event of the purchase price for the contract goods exceeding £20,000. the Supplier shall be entitled to stipulate that

progress payments are to be made by the Purchaser on specific dates irrespective of delivery dates of the contract goods or

any consignment thereof

f) If the Purchaser without the prior written agreement of the Supplier, refuses to accept the delivery of any consignment of the contract goods on the agreed delivery date, all penalty clauses accepted by the Supplier relative to the late delivery or non delivery of the contract goods shall be excluded and such agreed delivery date shall be treated as the due date for the purpose of (a) above in relation to any sums payable by the Purchaser to the Supplier in relation to such consignment

g) In all cases of late payment an administration charge of £50.00 shall be made by the Purchaser to the Supplier on demand

h) The Supplier shall be entitled to make a charge of £25.00 for every letter reminding the Purchaser that payments are overdue.

i) Times of payment shall be of the essence

6. INSOLVENCE AND BREACH

If the Purchaser becomes insolvent and/or unable to pay its debts or suffers a receiver to be appointed over any part of its undertakings or property or suffers an administrator to be appointed or if a petition is presented or a resolution is passed or a meeting is called for the purpose of passing a resolution for its winding up or if the Purchaser shall breach its obligations hereunder then the Company shall be entitled to without prejudice to its other rights and remedies, to terminate its obligations under the Agreement so far as unperformed and under any other contract between the Purchaser and the Supplier and all sums payable by the Supplier to the Purchaser under this agreement shall immediately become due and payable.

7 RISK

Risk in the contract goods shall pass to the Purchaser on delivery to the Purchaser or to a carrier for conveyance to the Purchaser.

8. PROPERTY

Property in the contract goods shall remain with the Supplier until all sums due to the Supplier under this Agreement (including interest) have been paid in full or until the contract goods have been sold to a customer of the Purchaser by the way of a bona fide sale at full market price. Unless otherwise agreed in writing by the Supplier, instalment payments shall not be treated as pertaining to any part of the contract goods but as part payment, for the whole contract of goods. Unless otherwise agreed in writing by the Supplier, payments received from the Purchaser shall be applied to invoices in chronological order, subject to the foregoing provisions.

9. Pending the passing of property in the contract goods to the Purchaser

a) The Purchaser shall hold the contract goods for and on behalf of the Supplier and in all dealings in relation to the contract goods or the proceeds of sale thereof the Purchaser shall act as a fiduciary: and

b) subject too the Purchaser's right to deal with the contract goods in the ordinary course of its business, the Purchaser shall store

the contract goods or otherwise keep them so that they remain identifiable as the Suppliers property

10 . If the Purchaser sells the goods prior to the payment in full of all sums due to the Supplier under

this Agreement (including interest)

a) as between itself and its customer the Purchaser shall act as principle.

b) the Purchaser shall give written notice of such sale to the Supplier

c) Purchaser shall hold the whole proceeds of sale as trustee for the Supplier and shall place such proceeds in a separate bank

account: and,

d) the Purchaser shall on demand assign to the Supplier all the rights of the Purchaser in respect of the sale.

11. The Purchaser shall properly insure the contract goods for the benefit of the Supplier between the time risk passes and the time property in the contract goods passes. Prior to the passing of ownership in the contract goods or any particular consignment thereof the Purchaser shall not remove, obliterate or otherwise alter any label, mark or other means the Supplier may have of identifying the contract goods.

12. If the Purchaser defaults in payment of any sum when due under this Agreement, the Supplier shall be entitled to repossess the contract goods (without prejudice to any other rights or remedies available to it) and for this purpose the Supplier and its agents shall be entitled to enter upon any land or building on or in which the contract goods may be situated and to remove same, and all cost incurred by the Supplier or by its agents in connection with such repossession shall be borne by the Purchaser.

13. In the event that any of the contract goods enter into the custody of a third person before the property therein has passed to the Purchaser, the Purchaser shall ensure that they shall be entered in the records of that person as the property of the Supplier deliverable to its order.

14. The Suppliers property in the contract goods shall not be affected by their use as components in the manufacture of products provided that the goods remain identifiable and capable of separation, and if the Purchaser sells the products it shall appropriate from the proceeds of sale a sum equal to the amount owed to the Supplier in respect of goods forming part thereof and such sum shall be held in trust for the Supplier and shall be placed in a separate bank account.

15. If the contract goods, in the process of manufacture, become unidentifiable or incapable of separation, the Supplier shall become the owner of the products manufactured there from and clauses 9 to 12 of this Agreement shall apply *mutatis mutandis* to such products but so that:

a) if the Purchaser sells the product it shall appropriate from the proceeds of sale a sum equal to the amount owed to the

Supplier in respect of the contract goods forming part thereof and such sum shall be held in trust for the Supplier and placed in a separate bank account.

b) if the Supplier takes possession of the products it shall sell them (without being under an duty to obtain the best price) and (subject to any right to set-off) shall account to the Purchaser for any sum received in excess of the amount owed to the Supplier in respect of the contract goods forming part thereof.

16. The Purchaser authorises the supplier to treat a delivery of the contract goods to a carrier as being a delivery to the Purchaser

for the purpose of section 32(2) of the sale of Goods Act 1979.

17. WARRANTIES

The Supplier expressly excludes any warranty as to the fitness or suitability of the contract goods for any particular purpose. whether or not such purpose has been communicated by the Purchaser to the Supplier

18. Except in respect of death or personal injury, liability of the Supplier shall be limited on the basis that each limitation is separate.

independent and severable from each other limitations as follows:

- a) if the contract goods are manufactured by the Supplier according to patterns, designs or specifications supplied by the Purchaser there shall be no liability for loss or damage to or caused by the contract goods other than that directly referable to faulty workmanship or materials, except that if such materials are faulty by reason only that their use in the manufacture of the contract goods is inappropriate but are otherwise as specified by the Purchaser then there shall be no liability for any such damage or loss, there shall be no liability for any failure or delay by the Supplier in fulfilling its obligation under the contract which is due in whole or in part to war (declared or undeclared) civil strife, strike, industrial action short of strike, industrial disputes, accidents, breakdown or failure of plant or any direct or indirect cause outside the Suppliers control:
- b) There shall be no liability for special, consequential or collateral loss.
- c) There shall be no liability in respects of claims intimated to the Supplier more than one year after the date of the final invoice relative to the contract goods to which the claim relates.
- d) The total liability of the Supplier in relation to any of the contract goods shall not exceed one hundred percent of the purchase price for the contract goods in question.
- e) The total liability of the Supplier in relation to any contract shall in no circumstances exceed £20, 000 (twenty thousand pounds sterling).

19. DELIVERY

- a) Unless otherwise specified, the purchase price shall include delivery to the Purchaser's address as stated overleaf if situated

in Great Britain or Northern Ireland, within the Carrier's free delivery limits, and at the option of the Supplier, delivery may be made either :-

- 1) by goods rail transport, and subject to the Carrier's conditions to the Purchaser 's address as stated above, if situated within the Carriers' free delivery limits:

2) by road transport on suitable roads only, to the Purchaser's address as stated overleaf and subject to the Carriers' conditions

3) by shipment coastwise, subject to the Carriers' conditions

b) If requested by the Purchaser the Supplier shall, on behalf of the Purchaser, arrange carriage and insurance the charge for which, together with any charges for customs clearance documents or export licence shall be invoiced together with the contract goods.

20. SUPERVENING CIRCUMSTANCES

a) Any delay in or failure of performance by the Supplier or any of its obligations shall not constitute default or give rise to any claims for damages, if and to the extent such delay or failure of performance is caused or contributed to by any happening or event which is not within the control of the Supplier including any strike, lock-out or labour dispute or compliance with any law, order, demand or request of any Government or any international or local authority having jurisdiction.

b) in the event of an export licence being necessary in relation to the contract goods and such licence not being granted the Supplier shall be entitled to treat the contract as terminated forthwith

21 The Supplier undertakes to use all reasonable endeavours to maintain delivery dates but shall not be liable for claims arising in respect of consequential loss or otherwise for failure to procure delivery of the contract goods or any consignment thereof by any such delivery date .

22. In the event of the Purchaser proving that any of the contract goods are defective in respect of either materials or workmanship then it shall be at the Supplier's option if such contract goods are returned to the Supplier within three months from the date of their receipt by the Purchaser, to repair or replace the same and re-deliver to the same address as the original contract goods were delivered. The Supplier accepts no further liability in respect of the contract goods and any claim relating to expenditure by the Purchaser on the salvaging of defective contract goods shall be met by the Purchaser unless the subject of specific agreement between the Purchaser and the Supplier.

23 . PENALTY CLAUSES

Any penalty clause contained in any communication of the Purchaser shall be construed in accordance with these Terms and Conditions and where such clause is at variance with the terms hereof these Terms and Conditions shall prevail

24. TESTS

In the event of the Purchaser requiring specific tests to be carried out on the contract goods prior to dispatch by the Supplier, the cost of such tests shall be invoiced separately to the Purchaser.

25 . SEVERABILITY OF TERMS AND CONDITIONS

Each of the Terms and Conditions hereof shall be treated as independent and severable and should any of the foregoing terms or conditions be or be declared invalid before a court of competent jurisdiction then such terms or condition shall be deemed to be deleted from these Terms and Conditions and the remaining Terms and Conditions shall be treated as unaffected by such deletion.

26. CANCELLATION

Any order placed by the Purchaser and accepted by the Supplier may not be cancelled in whole or in part except with the prior agreement in writing of the Supplier. If agreement is given by the Supplier a cancellation charge will be made to cover the Supplier's actual or anticipated loss including without prejudice to the foregoing generality any loss arising in respect of materials purchased or ordered and any sub-contracts entered into, and to compensate the Supplier for any work already undertaken or in hand. The Supplier reserves the right to charge the full price of the contract goods by way of a cancellation charge .

27. INTELLECTUAL PROPERTY.

The Purchaser shall indemnify the Supplier against all damages, penalties, costs, claims and liabilities in respect of the infringement of any intellectual property rights of any nature whatsoever, resulting from the carrying out of work in accordance with the Purchaser's specification or instructions, express or implied

28. In the event of any information concerning methods of production, secret processes or know-how of the Supplier which has not entered the public domain, being divulged to the Purchaser or becoming known to the Purchaser for the purpose of quality control of the contract goods or otherwise, such information shall be treated by the Purchaser as confidential in its entirety and the Purchaser undertakes not to divulge such information to any unauthorised person or persons.

29 ADDITIONAL TERMS

Any contract between the Supplier and the Purchaser shall also be subject to the Special Conditions (if any) annexed.

30 ASSIGNATION

- a) The Purchaser shall not under any circumstances assign this Agreement
- b) The Supplier may assign this Agreement as they see fit.

31. LAW AND JURISDICTION

- a) This Agreement shall be governed by the law of Scotland. The Sheriff Court in Elgin or Court of Session in Edinburgh will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this agreement. The purchaser irrevocably agrees to submit to their jurisdiction.