

KEEP COOL REFRIGERATION CC
TERMS AND CONDITIONS OF SALE:

1. DELIVERY

- 1.1 Any delivery dates, whether expressly specified or otherwise are approximate only and may change due to circumstances beyond the reasonable control of the BUSINESS.
- 1.2 Keep Cool Refrigeration CC (hereinafter refer to as the BUSINESS) shall make every effort to effect delivery timeously, but undertakes to inform the Customer of any undue delay in writing as soon as it becomes practically possible to do so.
- 1.3 The BUSINESS shall be entitled to effect delivery of items on different dates on condition that such amended dates have been communicated to the customer by the BUSINESS.
- 1.4 The costs of delivery will be borne by the person or BUSINESS reflected on the Invoice.
- 1.5 The purchaser shall be liable for any costs arising from the customer's default or incorrect instructions if the BUSINESS is unable to effect delivery of any goods on the delivery date as a result thereof or if delivery is delayed due to the fault of the customer or its representative. The BUSINESS will be entitled to charge a storage fee of R100 per day on goods stored for the customer in the event where the customer fails to collect any items one week after being informed by the BUSINESS that it is ready for collection.

2. PRICES

- 2.1 Unless otherwise specifically provided, all prices are quoted with regards to work performed at our offices in Cape Town, and do not include the price of waste-fittings, hot or cold water bib-cocks, seam and condense valves or traps, starters, isolators or connecting of any services, gas, electric, steam or plumbing on site. Any cutting away or making good flashings, waterproofing, painting or any general builder's work is also not included in the said prices and shall be borne by the customer.
- 2.2 The prices quoted are based on prices ruling as at the date of the quotation ("the relevant date") and as reflected on the job card, and are subject to increase in accordance with any increase occurring between the relevant date and delivery in the price of materials, customs duties, road or rail transportation rates or in or due to increase in rates of wages or due to variations in rates of exchange or in any other increase in cost of materials, commodities, or other expenses that may have been incurred due to circumstances beyond the reasonable control of the BUSINESS. **The BUSINESS undertakes to inform the Customer of any increase and undertakes not to proceed with any job or supply of goods until the Customer has accepted such quotation in writing.**
- 2.3 All prices exclude VAT.
- 2.4 The customer shall be entitled to such discount, if any, as may be reflected on the invoice.

3. RISK

All risk in and benefit to the goods or any part thereof shall pass to the customer on delivery. If the customer fails to take delivery of the goods if and when tendered by the BUSINESS, then, the risk therein shall pass to the customer as soon as delivery is tendered by the BUSINESS, and all costs, directly or indirectly, incurred by the BUSINESS in storing (refer to clause 1.5), and invoicing the goods after the date of such tender shall be paid by the customer to the BUSINESS on demand.

4. LIMITING OF LIABILITY

- 4.1 The BUSINESS shall not be liable to the customer for any claims, damages or loss whether contractual or delictual and whether general special or consequential, which may be caused directly or indirectly due to

circumstances beyond the reasonable control of the BUSINESS, its employees or representatives.

- 4.2 The customer hereby indemnifies the BUSINESS against any claim, which may be made against the BUSINESS by any other person in respect of any matter for which the liability of the BUSINESS is excluded in terms of this agreement.
- 4.3 All new parts or goods provided carries a 6 month warranty and the BUSINESS warrants that the goods will be suitable for the purpose for which it was advertised, free of defects and durable for a reasonable period of time, failing which the customer will be entitled to choose between a repair, refund or replacement, unless the customer has altered the goods or subjected it to abuse or any other use that it was not manufactured for (the warranty also excludes fair wear and tear of the goods).

5. VARIATIONS OR EXTRAS

- 5.1 Any experimental or development work carried out at the request of the customer shall be charged for at the agreed rate with the customer and failing such written agreement, at the BUSINESS's then ruling rate.
- 5.2 If due to the inadequate size or area of doorways or other forms of access to the building construction on the site, it becomes necessary to enlarge the doorway or other form of access, or to dismantle any equipment in order to convey any such equipment into the building construction for the purposes of executing the contract works, the BUSINESS undertakes to discuss with the Customer the extent of the specific expense in writing and will temporarily be excused from its obligations in terms of the contract until written authorization and acceptance of the additional work has been received by the BUSINESS.
- 5.3 No variations to the terms and conditions of sale will be binding on the BUSINESS unless agreed to in writing and signed by it.

6. OWNERSHIP

- 6.1 Notwithstanding anything to the contrary herein contained or implied, ownership in any of the goods sold or supplied in terms hereof shall remain vested in the BUSINESS until such time as payment of the purchase price in respect thereof will be made in full.
- 6.2 For as long as the purchase price of the goods remains unpaid:
 - 6.2.1 then any claim which the customer may have in respect of the sale of the goods by it to any purchaser of the goods shall be deemed to have been ceded to the BUSINESS as security of the payment of the purchase price, the goods and the customer shall forthwith deliver to the BUSINESS all documentation evidencing such sale.
 - 6.2.2 the customer shall be obliged to give written notice to the landlord of any premises at which the goods are housed or kept that ownership of the goods vests in the BUSINESS.
- 6.3 Pending payment of the whole of the purchase price, the customer shall insure the materials/goods at its own expense against such perils as the BUSINESS may determine and hereby cedes such policy of insurance to the BUSINESS's security for its obligations hereunder.

7. PAYMENT

- 7.1 For the purpose hereof the contract shall be deemed to be a divisible contract for the supply of or sale of goods and contract for the service of installation or fixing.
- 7.2 Payment for the supply of goods *and/or* materials shall be due and payable within 30 days (i.e. approximately 20 business days) of the date of delivery or tender of delivery for any such goods.
- 7.3 If no complaint in writing is received within ten days of the aforesaid delivery, the BUSINESS shall be deemed to have made due and proper delivery.
- 7.4 If any payment is not made by the due date thereof, the BUSINESS shall be entitled at its option to suspend any deliveries.
- 7.5 The amount payable for the supply of goods *and/or* materials shall bear interest at a rate of 2% per month or such higher percentage as may be prescribed in terms of the National Credit Act (as amended).

8. DRAWING AND SPECIFICATIONS

- 8.1 Unless expressly stated, drawings submitted with the quotation shall not be binding as to detail.
- 8.2 The BUSINESS reserves the right to amend construction specifications by the substitution of alternative materials as those specified, providing that such amendments do not adversely affect the serviceability of the equipment or has been agreed to between the parties in writing.
- 8.3 Copyright in all drawings vests in the BUSINESS.

9. GENERAL

- 9.1 The customer hereby consents in terms of Section 45(1) of the Magistrates Court Act 32 of 1944, in respect of all proceedings which may be instituted against him by or arising out of or in connection with the this order, to the jurisdiction of any Magistrate's Court which at the time of such proceedings has jurisdiction over him in terms of event of any claim being instituted and having been awarded the costs of those proceedings being entitled to such on the scale as between Attorney and Client on condition that such scale has been awarded and confirmed by a presiding officer or Magistrate. Notwithstanding the foregoing, the customer agrees that the BUSINESS shall in its own discretion, be entitled to disregard the foregoing consent to jurisdiction and institute any proceedings arising out of or in connection with this agreement in any division of the Supreme Court of South Africa having jurisdiction.
- 9.2 This agreement constitutes the entire agreement between the customer and the BUSINESS and the customer acknowledges that there are no collateral oral agreements or conditions precedent in any way varying this agreement. It's further agreed that any agreement in any way varying the terms and conditions of this agreement shall be of no force or effect unless contained in writing and signed by the customer personally and for and on behalf of the BUSINESS.
- 9.3 No amendment or consensual cancellation of this agreement or any provision or term thereof and no extensions of time, waiver or relaxation or suspension of any of the provision of terms of this agreement shall be binding unless recorded in a written document signed by the BUSINESS. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereas was made or given.
- 9.4 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement shall operate as an estoppels (legal defense if someone contradicts an already established truth) against either party in respect of its rights under this agreement, nor shall it operate so as to preclude such party thereof from exercising its rights in accordance with this agreement, unless such agreement was signed by both parties after conclusion of this agreement.
- 9.5 No representative, agent or salesman of the BUSINESS has any authority to waive or vary any of these conditions or to make any representation of whatsoever nature on behalf of the BUSINESS and therefore the Customer is warned to test the validity of such statement by reporting it to any Member of the BUSINESS.

10. GOVERNING LAW

This agreement shall be governed by and constituted in accordance with the laws of the Republic of South Africa.