



REFRIGERATION

Concord Refrigeration

A division of Southey Holdings(Pty) Ltd

(Co. Reg. No. 2012/204464/07)

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STANDARD TERMS AND CONDITIONS

1. PARTIES

This document ("Standard Terms") sets out the terms and conditions of contract that apply to all business conducted between Concord Refrigeration a division of Southey Holdings (Pty) Ltd ("Concord") and the person or entity ("Customer") which acquires goods or services ("Product") from Concord. The Standard Terms shall supersede and take precedence over any contrary term contended for by the Customer unless such contrary term is recorded in writing and signed by a director of Concord.

2. PAYMENT

- 2.1 Payment shall be made in accordance with any directions in that regard detailed in the quotation, and failing such directions then by no later than the date scheduled for delivery, such that the amount due shall reflect as a credit on Concord's bank statement before Concord shall deliver the product to the Customer.
- 2.2 Where credit is extended payment shall be made by not later than the last business day (which excludes Saturdays) of the month following the month in which the invoice for the Product is issued, without demand, reduction or set off.
- 2.3 Should payment not be made on due date, then all discounts (if any) granted shall be reversed and all outstanding amounts owing shall fall due for payment immediately.
- 2.4 Any amount remaining unpaid after the due date shall bear interest, compounded monthly on the last day of each month, from the due date until it is paid, at a rate 5 (five) percent above the published prime rate of interest from time to time of Concord's principal bankers or, if a lower maximum rate is prescribed by law, then at that lower rate.
- 2.5 All payments are to be made in monetary currency, without demand and free of exchange, deduction or set-off and at such place and by such means as Concord may reasonably stipulate. Where payment is made by post the risk of loss arising from the use thereof shall rest with the Customer.
- 2.6 Should the Customer default in making any payment on its due date, Concord shall have the right forthwith to cancel the sale in respect of Product bought but not yet delivered, always subject to Concord's rights to damages, and Concord shall have the right to retain all moneys paid by the Customer pending the determination of such damages and thereafter to set off the amount so retained against the amount owing.
- 2.7 As security for the due payment of all amounts due to Concord, the Customer hereby cedes in securitatem debiti to the Contractor all of its rights, title and interest in and to any amount due and payable to the Customer in respect of the Product by any third party, whether at present or in the future. The Customer undertakes to advise the third party of the fact of the cession and to sign all and any documentation which is required to give effect to the implementation of the cession.

3. PRICE

- 3.1 The price to be paid by the Customer to Concord for the Product shall be the price set out in the tender or quotation, or such other price as may be agreed upon by the Customer and Concord.
- 3.2 All prices are subject to increase by the amount of any increase in direct taxes and duties applicable to the Product between the date of order and the date of delivery.

- 3.3 All prices are subject to increase by the amount of the increase in price to Concord arising between the date of order and the date of delivery, of the components which form part of the completed Product.
- 3.4 In addition, the prices of Product ordered but not delivered shall be subject to variation to take account of foreign exchange variations arising between the date of acceptance of the order, and the date of delivery.
- 3.5 In the event that the tender or quote or agreed price does not deal with VAT then the price shall exclude VAT, which shall be paid by the Customer to Concord in addition to the agreed price, at the applicable rate in accordance with the Value-Added Tax Act.

4. RISK AND OWNERSHIP

- 4.1 Notwithstanding the delivery of any Product to the Customer, ownership shall not pass until Concord shall have received full payment, including interest if payment is made after due date.
- 4.2 Concord shall be entitled to give notice to third parties of its reserved ownership of Product as it may, in its sole discretion, deem necessary.
- 4.3 The Customer shall immediately notify Concord if any third party contests the ownership of Product or attempts to assert any proprietary right to any Product in which ownership remains vested in Concord.
- 4.4 All Product whether or not affixed to immovable property, shall be deemed to be movable property and severable.
- 4.5 The risk in all Product shall pass from Concord to the Customer on dispatch ex Concord's works even if carriage paid delivery has been arranged.

5. DELIVERY

- 5.1 The date of delivery of Product is not guaranteed and Concord reserves its right to extend the time as may be reasonable if execution of the contract by Concord is delayed by the Customer's instructions, or lack of instructions, or by any cause whatsoever beyond Concord's reasonable control.
- 5.2 Should the Customer require the transportation of Product by alternative means to that which is ordinarily used by Concord, then such alternative means of conveyance shall be for the Customer's account.
- 5.3 Delivery shall be deemed to have taken place against signature of Concord's delivery note by the Customer, or in the event that a carrier is used, upon delivery to such carrier.
- 5.4 No liability shall attach to Concord in respect of any direct, indirect or consequential losses arising from any delay in the completion of delivery of Product, irrespective of the cause of such delay.

6. GUARANTEE

- 6.1 Product is guaranteed free from all defects in materials used and defects in manufacture for a period of (1) one year from date of delivery but, as the Product is used for a multiplicity of purposes and Concord has no control over the method of their application or use, Concord does not warrant the fitness of its Product for any particular purpose.
- 6.2 All Product is sold on the condition that Concord shall not be liable for defects otherwise than strictly in accordance with these Standard Terms.

7. CLAIMS

- 7.1 In the event that Product is received in a damaged condition then the carrier's receipt shall be endorsed accordingly and notification sent to Concord with a copy of the carrier's receipt, within three (3) days of receipt of the Product.
- 7.2 Claims for defective or damaged Product shall be made within fourteen (14) days of receipt by the Customer.
- 7.3 No defective Product claims shall be entertained unless a full report on the allegedly defective Product is provided to Concord together with such additional information as Concord may reasonably require in order to evaluate the claim.
- 7.4 No claims will be considered by Concord if the Product has been subject to any improper treatment after delivery or if the Product has been installed incorrectly.
- 7.5 In the absence of a claim in terms of this clause, the Customer shall be deemed to have received and accepted the Product in good order and in full compliance with the order placed.

8. LIMITATION OF LIABILITY

- 8.1 Notwithstanding anything to the contrary, and in any event :
- 8.1.1 Concord, its employees, agents or assigns shall not be liable to the Customer for any indirect, consequential, incidental or contingent loss or damages, including, but not limited to, stock loss, loss of profits, loss of use, loss of production, loss of contracts, loss of customers or loss of goodwill, or for any punitive damages of any nature arising out of a breach of contract or any cause whatsoever.
- 8.1.2 the limit of Concord's liability under all circumstances shall be to the replacement of the defective Product free of charge or the refund of an amount equal to the value of the services rendered according to the contract price, which the Customer accepts as the limit of Concord's liability to the Customer arising out of contract or delict or any cause whatsoever and regardless of negligence in any degree on the part of Concord or those for whom it is vicariously liable.

9. SAMPLES

Concord accepts no responsibility for the custody of Customer's samples, drawings, templates and other designs which will not be returned unless requested in writing within thirty (30) days of the date of receipt of the order to which they relate.

10. BREACH

- 10.1 Should the Customer default in making any payment by due date for payment then Concord shall have the right to cancel all contracts in respect of the sale or supply of any Product not yet delivered subject always to Concord's rights to hold the Customer liable for damages. Concord shall have the right to retain all money paid by the Customer pending determination of such damages and thereafter to set-off the amount so retained against the amount owing.
- 10.2 Concord shall be entitled to summarily cancel any contract and recover all amounts then due together with interest and costs should the Customer at any time:
- 10.2.1 commit any act of insolvency, be or become insolvent, attempt to compromise with its creditors or be the subject of insolvency proceedings;
- 10.2.2 do or suffer to be done any act or thing which may prejudice the rights of Concord;
- 10.2.3 breach or otherwise fail to observe any of the Standard Terms or any other terms governing the sale or supply of the Product by Concord to the Customer;
- 10.2.4 make any misrepresentation or commit any acts of fraudulent or dishonest nature against Concord or affecting Concord's rights.
- 10.3 A certificate signed by any director or manager in the accounts department of Concord setting out the amount

owing including interest and the rate of interest, by the Customer at any time, shall constitute rebuttable evidence of the amount owing to Concord.

11. DELIVERY OF DOCUMENTS

- 11.1 For the purposes of delivery of legal documents, including legal process, and contractual and statutory notices, the Customer chooses delivery by hand, by post, by fax or by email, and chooses the addresses, including email addresses, and fax numbers, that the Customer :
- 11.1.1 inserts in any credit application form completed by or on behalf of the Customer;
- 11.1.2 records on its letterhead and other business documents;
- 11.1.3 uses as its principal place of business;
- 11.1.4 records as its registered address;
- 11.1.5 uses to send communications to Concord.
- 11.2 Any notice delivered in terms of these Standard Terms shall, if delivered by hand, be deemed to have been duly delivered on the date of delivery and, if sent by post, be deemed to have been delivered four days after posting and if sent by fax or email, be deemed to have been delivered on the day that the fax or email is sent. A written notice or communication which has been actually received by the Customer will be regarded as delivered despite the fact that it was not dispatched to a chosen address.

12. JURISDICTION

The Customer consents in terms of Section 45(1) of the Magistrates' Court Act, No. 32 of 1944, as amended, in respect of any proceedings which may be instituted against it by Concord, to the jurisdiction of any Magistrates' Court which at the time of such proceedings has jurisdiction over it in terms of Section 28(1) of the said Magistrates' Court Act. Notwithstanding the foregoing the Customer specifically agrees that Concord may in its discretion disregard the foregoing consent to jurisdiction and institute any proceedings in the High Court having jurisdiction.

13. COSTS

The Customer shall pay any costs incurred by Concord as a result of any breach by the Customer of these Standard Terms or any failure by it to pay an amount on due date, on the scale as between attorney and own client. Such costs shall include any collection commission which Concord is required to pay to its attorneys as a result of any action taken by them.

14. NON-VARIATION

- 14.1 No person other than a director of Concord has any authority to contract on Concord's behalf on terms or conditions other than those contained herein.
- 14.2 No variation of these Standard Terms shall be binding upon Concord unless reduced to writing and signed by a director of Concord.

15. GENERAL

- 15.1 No relaxation or indulgence which Concord may grant to the Customer shall constitute a waiver of its right to enforce strict compliance with these Standard Terms.
- 15.2 Advice, recommendations or opinions by representatives of Concord are given and expressed in good faith and shall not constitute representations of any description, and shall not give rise to any claim against Concord.
- 15.3 Descriptions, illustrations and examples contained in any catalogue, brochure, advertisement or price list are published for general information and do not constitute representations and do not form part of any estimate or contract or part of these Standard Terms, which shall constitute the sole and only agreement between the parties.