

RAMSA
(Refrigeration and Air Conditioning Manufacturers' and Suppliers' Association)
(Members of the Steel & Engineering Industries Federation of S.A.)

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GENERAL CONDITIONS OF SALE AND TENDER

These conditions shall be deemed to govern all tenders made and contracts entered into by members of the Refrigeration and Air Conditioning Manufacturers' and Suppliers' Association ("RAMSA") if incorporated by reference in the tender or the contract.

1. DEFINITIONS

- 1.1 "Seller" means a member of RAMSA who makes a tender or enters into a contract for the provision by such member of goods or services;
- 1.2 "Purchaser" means any person who enters into an agreement with the Seller for the acquisition by such person of goods or services;
- 1.3 "tender" includes an offer, quotation or tender made by the Seller to any person in writing;
- 1.4 "the contract" means an agreement between the Seller and the Purchaser arising from the acceptance by the Purchaser of a tender or the acceptance by the Seller of an order;
- 1.5 "the parties" means the Seller and the Purchaser.

2. ACCEPTANCE OF TENDER

Tenders issued by the Seller shall remain open for acceptance by the person to whom it is addressed for a period of 30 (thirty) days from the date of the tender as reflected thereon, unless otherwise agreed in writing by the Seller at time of Tender. It is the Purchaser's obligation to advise the Seller of such extended validities prior to Tender closing. The Purchaser's written acceptance of the Tender must be received by the Seller within such 30 (thirty) day period, failing which the Tender shall be deemed to have lapsed.

3. DELIVERY

Place of delivery

- 3.1 Unless otherwise agreed, the Seller shall effect delivery to the Purchaser at the premises of the Seller or f.o.r. at the railway station nearest to the Seller.

Date of Delivery

- 3.2 Unless the Seller gives a firm undertaking of the date for delivery, any delivery dates specified represent only the Seller's best estimate of those dates and the Seller shall not be contractually or otherwise bound to that date of delivery.

Delivery within reasonable time

- 3.3 Should no delivery dates be expressly agreed, the Seller shall effect delivery within a reasonable time.

Deliveries by instalment

- 3.4 Where delivery is to be effected in instalments, the Seller may invoice the Purchaser for each instalment separately and obtain payment therefor.

Off-loading

- 3.5 Where the Seller effects delivery other than at its own premises or other than f.o.r., the delivery shall be deemed to have been effected before off-loading commences and all off-loading shall be effected by the employees or agent of the Purchaser at the Purchaser's sole risk. The Purchaser shall be responsible for all damage of whatsoever nature which may be caused as a result of or during the off-loading, notwithstanding the fact that the Seller or its employees assists with the off-loading.

Notice of delivery

- 3.6 Provided the Seller has given timeous notice of its readiness to effect delivery, all demurrage costs incurred by the Seller in delivering the goods to the Purchaser, including, but not limited to, the costs resulting from the Purchaser's inability to off-load the goods, will be payable by the Purchaser to the Seller on demand. Should the Seller, after having advised the Purchaser of its intention to effect delivery on a particular date; fail to effect such delivery, and the Purchaser makes arrangements for special equipment or facilities required for off-loading, then the Seller shall be liable for all costs and charges incurred by the Purchaser arising from the making of such arrangements.

Storage

- 3.7 Should the Purchaser fail to take delivery of any goods in terms of the contract, then, without prejudice to any other rights which the Seller may have, the Seller shall be entitled at the Purchaser's expense to store the goods on the Purchaser's behalf, and the Purchaser shall on demand pay to the Seller the reasonable costs incurred by the Seller in such storage.

Inspection by Purchaser

- 3.8 The Purchaser will accept the goods at the place of delivery in respect of the number and condition of packages only. Notwithstanding any receipt that may have been given by the Purchaser, the Purchaser shall be entitled, subject to the provision of condition 8, to return any goods found not to be in accordance with its order as regards condition or specification. The Seller shall not be liable for any claim in respect of shortage in quantity or patent defect unless written notice of such claim is received by the Seller within 7 (seven) days after the Purchaser has received the goods.

4. PRICE

Unless otherwise specified in the tender, prices shall include Value Added Tax.

5. PRICE ADJUSTMENT

- 5.1 Haylett Escalation formula (Workgroup 170) shall be used as a cost price adjustment for locally manufactured goods. If the Seller wishes to base his offer on "SEIFSA" escalation, he must qualify this over and above the standard "RAMSA" document.

- 5.2 Should goods be designated as fully imported goods or imported goods, the prices allocated to such goods shall be subject to adjustment to take into account fluctuation in the Rate of Exchange by applying the following formula:

$$A = (C \times RF) - (C \times RO)$$

Where:

A	—	is the amount of adjustment
C	—	is the f.o.b. value of the imported goods
RO	—	is the Rate of Exchange stated in the tender
RF	—	is the actual Exchange Rate incurred by the Seller

Exchange fluctuation adjustments shall also be applied to Import Duty, Surcharge, Freight Costs and any statutory increases. The Seller shall, if so required by the Purchaser, submit documentary proof of the Exchange Rate paid.

- 5.3 Payment in respect of any price adjustments shall be by the Purchaser to the Seller within 30 (thirty) days of the date of invoice in respect thereof.
- 5.4 Any dispute between the parties regarding the application of the provisions of this condition 5 shall be referred for decision to the Seller's auditors, acting as expert and not as arbitrators, and their decision shall be final and binding on the parties.

6. PAYMENTS

- 6.1 All prices (including deposits) are strictly nett.
- 6.2 When the goods sold by the Seller are wholly or partially imported by the Seller for purposes of the contract, the price payable in respect thereof shall be payable by the Purchaser to the Seller as follows:
 - 6.2.1 15% (fifteen per centum) thereof, on the date of the contract;
 - 6.2.2 60% (sixty per centum) thereof, against proof of shipment of the goods in the form of a bill of lading; and
 - 6.2.3 the balance, within 30 (thirty) days after the date of delivery of the goods to the Purchaser.
- 6.3 When the goods sold by the Seller are locally manufactured or assembled for purposes of the contract, the price payable in respect thereof shall be payable by the Purchaser to the Seller as follows:
 - 6.3.1 on the date of the contract the Seller shall forward to the Purchaser a schedule of progress payments together with a corresponding cost schedule;
 - 6.3.2 progress payment shall be made to the Seller within 30 (thirty) days of the dates stipulated in the aforesaid schedule of progress payments ("the claim dates"), unless otherwise agreed to in writing by the Seller and the Purchaser. Inspection shall be made by the representatives of the Seller and the Purchaser prior to the claim dates.
- 6.4 All amounts not paid on due date shall, without prejudice to the Seller's other rights in terms of the contract or otherwise, bear interest at a rate of interest per annum which is 3% (three per centum) higher than the most favourable rate of interest enjoyed by the Seller from time to time on overdrawn account with any of its bankers. A certificate signed by any branch manager or the branch accountant (his appointment or authority need not be proved) at a branch of such bankers as to that rate shall constitute "prima facie" proof of such rate.
- 6.5 Should the Seller agree to payment after order, the Purchaser shall at the request of the Seller provide satisfactory payment guarantees amounting to the total selling price including escalation and interest as may be applicable.

7. VARIATIONS

The Purchaser shall pay, in addition to the contract price, any expense incurred by the Seller in making, at the request of the Purchaser, any modification, alteration or addition to any standard item of goods.

8. WARRANTY

- 8.1 The Seller warrants that the goods will perform in accordance with the performance figures and data specified in the contract provided that they are correctly installed and operated within the recommended limits of the manufacturer's design and performance figures.
- 8.2 The warranty period in respect of any goods shall be 15 (fifteen) months after the date of delivery or 12 (twelve) months from the date on which the goods are set into operation, whichever period expires first.
- 8.3 Goods which are fitted with a refrigeration compressor will be covered by this warranty only when commissioned by the Seller or a contracting party approved by the Seller.
- 8.4 No warranty claim to exceed original cost of equipment:
- 8.5 The Seller shall repair or replace free of charge to the Purchaser all goods which become defective during the warranty period as a result of defects in design, materials or workmanship, fair wear and tear excluded, provided, however, that -
 - 8.5.1 the Purchaser shall notify the Seller in writing of its claim within the warranty period;
 - 8.5.2 the Seller shall not be liable for costs incurred in dismantling or fitting replacement parts or for any independent inspection undertaken by the Purchaser;
 - 8.5.3 the Purchaser shall return any allegedly defective goods, carriage paid, to the Seller's works;
 - 8.5.4 where the Seller is obliged to effect any repair or replacement in terms of this warranty, it shall do so within a reasonable period of time relative to the particular circumstances;
 - 8.5.5 on return to the Seller's works of any allegedly defective goods, the Seller shall examine the goods for defects. Should any fault found be due exclusively to defective goods the Seller shall comply with its obligations under this warranty at no charge except that the Seller shall be entitled to recover its costs of labour, transport and refrigerant;
 - 8.5.6 the Seller shall be released from all obligations under this warranty if, without its written consent, repairs or modifications to any goods are made other than by the Seller's own employees, or, if any goods are operated with any equipment or components incompatible with the goods supplied by the Seller, or the goods are not operated or maintained in accordance with the Seller's instructions or the manufacturer's guidelines.
 - 8.5.7 the Seller shall be entitled to retain any defective goods which it replaces as its exclusive property and the Purchaser shall not be entitled to any compensation in respect thereof.
 - 8.5.8 until liability under this warranty has been established, any replacement, component or associated service shall be provided by the Seller only against the official order of the Purchaser.
- 8.6 The Seller's liability under this warranty shall be in lieu of any warranty, condition or liability implied by law as to the quality or fitness for any particular purpose of the goods and, save as provided in this condition, the Seller shall not be under any liability, whether in contract, delict or otherwise in respect of defects in goods delivered or for any injury, damage or loss resulting from such defects or from work done in connection therewith.
- 8.7 The Seller's liability under this warranty shall not extend to corrosion, deterioration or any defect caused by normal wear and tear, neglect or misuse.
- 8.8 Should the Purchaser require the warranty to be extended beyond the dates as set out above, the Seller shall endeavour to supply extended warranties to meet the Purchaser's guarantee obligations. Any cost to effect such extended warranty periods shall be for the Purchaser's account.

9. CONSEQUENTIAL LOSS

The Seller shall not be liable for consequential loss or loss of profits arising from defective equipment or workmanship or from any cause whatsoever.

10. OWNERSHIP

- 10.1 Ownership of goods shall remain vested in the Seller until the price in respect of such goods has been paid in full or unless satisfactory payment guarantees (see Clause 6.5) are provided by the Purchaser to the Seller.
- 10.2 The Purchaser acknowledges that for purposes of giving effect to 10.1 above, the goods shall be deemed to remain movable and severable property notwithstanding that they have been fixed to movable or immovable property owned by the Purchaser or by any other person whatsoever.
- 10.3 The Purchaser shall be obliged to inform the landlord of any premises in which the goods are installed of the provisions of this clause 10. The Seller reserves the right to similarly inform the landlord of these provisions.

11. EXEMPTIONS

- 11.1 All illustrations, diagrams, sketches or drawings furnished by the Seller are illustrative and shall not constitute representations made to the Purchaser for any purpose unless and to the extent only that such illustrations, diagrams, sketches or drawings are expressly warranted in writing by the Seller to be binding representations made to the Purchaser.
- 11.2 Should the Purchaser instruct the Seller to supply goods in accordance with specifications, measurements or other instructions, the Seller shall not be liable for any loss or damage suffered by the Purchaser as a result of any error, discrepancy or defect in the specifications, measurements or other instructions.

12. VIS MAJOR

- 12.1 The Seller shall not be liable for any delay or any failure to perform any obligation under the contract due to any cause beyond its reasonable control, including, but without being limited to, strikes, lockouts or any other industrial action, sabotage, terror, riot, invasion, war or preparation for war, fire, explosion, storm, flood, subsidence, epidemic or other natural or physical disaster, delays by railway, impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport, or any act or policy of any state of government or other authority having jurisdiction over either party.
- 12.2 Upon the occurrence of any event referred to in 12.1, making performance of any obligation impossible or causing the delay in the performance thereof, performance of such obligation shall be suspended for as long as the cause in question continues to operate, provided always that the party affected by such cause shall promptly give notice to the other of such fact.

13. SUBSTITUTIONS

Should circumstances, beyond the reasonable control of the Seller render unavailable any material or goods specified in the contract or otherwise required to fulfil the contract, the Seller may, with the approval of the Purchaser, which approval shall not unreasonably be withheld, substitute for such material or goods a suitable equivalent.

14. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

All drawings, plans, specifications and data furnished by the Seller relating to the goods are confidential and shall remain the property of the Seller and shall be deemed to have been imparted by it in trust to the Purchaser for the sole use of the Purchaser or persons nominated by the Purchaser and approved by the Seller. Such drawings, plans, specifications and data shall remain the exclusive property of the Seller and all intellectual property rights flowing therefrom shall vest in the Seller.

15. INDEMNITY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

If the goods are to be manufactured to any specification or design supplied by the Purchaser, the Purchaser indemnifies the Seller against all claims which may be made against the Seller and all liability which the Seller may incur as a result of the infringement of any intellectual property rights vesting in any third party as a result of the Seller's compliance with the Purchaser's specification or design and against all costs incurred by the Seller in any proceedings against it arising out of any such infringement.

16. RISK

Risk in the goods shall pass to the Purchaser upon delivery thereof by the Seller to the Purchaser.

17. SUSPENSION

If any amount owed by the Purchaser is not paid on the due date, then, without prejudice to any other right the Seller may have, 7 (seven) days after serving notice on the Purchaser requiring payment, the Seller may suspend the carrying out of any of its then uncompleted obligations until payment is made.

18. INSURANCE

When the Seller effects delivery other than at its own premises or other than f.o.r. at the railway station nearest to the Seller, goods shall be insured in transit by the Seller, against any loss or damage thereto. After delivery and until ownership passes in terms of 10, the Purchaser shall, at its own expense, adequately insure and keep the goods adequately insured, and upon request provide the Seller with proof thereof. The Purchaser hereby cedes to the Seller all the Purchaser's rights in terms of any insurance policy effected in terms hereof.

19. CANCELLATION AND BREACH

- 19.1 The Seller shall be entitled to cancel the contract or any uncompleted part thereof, without prejudice to any other rights which it may have in law, by written notice to the Purchaser, should the Purchaser –
 - 19.1.1 be provisionally or finally sequestrated, wound up or placed under judicial management;
 - 19.1.2 being a partnership, be terminated;
 - 19.1.3 compromise or attempt to compromise generally with its creditors;
 - 19.1.4 commit any breach of any of the terms or conditions of the contract and fail to remedy such breach within 10 (ten) days of receipt of a notice calling upon it to do so.
- 19.2 Upon termination of the contract for any of the above reasons –
 - 19.2.1 all amounts then owed by the Purchaser to the Seller in terms of the contract shall become due and payable forthwith; and
 - 19.2.2 the Purchaser shall be obliged to deliver forthwith to the Seller any goods in respect of which ownership has not passed.
- 19.3 Should the Seller become obliged to take legal action under the contract as a result of the default of the Purchaser, all legal costs incurred by the Seller (on an attorney and client basis), together with any collection commission payable, shall be recoverable from the Purchaser.

- 19.4 If all or any portion of the contract is cancelled by the Purchaser without default on the part of the Seller or without the Seller's written consent, the Purchaser shall be liable to the Seller for cancellation charges including but not limited to the Seller's incurred costs and such profit as would have been realised by the Seller from the transaction had the contract not been breached by the Purchaser.

20. DOMICILIUM AND NOTICES

- 20.1 Each party chooses as its "domicilium citandi et executandi" (domicilium) for all purposes under the contract, whether in respect of the serving of any court process, the giving of any notice or other documents or communications and for any other purpose arising from the contract, the address stated in the contract.
- 20.2 Any notice or communication required or permitted to be given under the contract shall be valid and effective only if in writing.
- 20.3 Any party may by notice to the other party change its domicilium to another physical address in the Republic of South Africa and such change shall be deemed to take effect on the seventh day after the receipt of such notice.
- 20.4 Any notice to a party contained in a correctly addressed envelope and –
- 20.4.1 sent by prepaid registered post to it at its domicilium; or
- 20.4.2 delivered by hand to a responsible person during ordinary business hours at its domicilium, shall be deemed to have been received, in the case of 20.4.1, on the seventh business day after posting (unless the contrary is proved) and, in the case of 20.4.2 on the day of delivery.
- 20.5 Notwithstanding anything to the contrary herein, a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen domicilium.

21. JURISDICTION

The parties consent, in terms of Section 45 of the Magistrate's Court Act No. 32, of 1944 (as amended) ("the Act"), to the jurisdiction of the Magistrate's Court for the district which, at the time of the proceedings in question, has jurisdiction in terms of Section 28 (1) of the Act, notwithstanding the fact that the amount in issue may exceed such jurisdiction. This consent to the jurisdiction of the Magistrate's Court shall not be a substitute for the jurisdiction of any other competent court which has jurisdiction, but shall be in addition to it.

22. EXCLUSION OF PRIOR WARRANTIES AND REPRESENTATIONS

No party shall have any claim or right of action arising from any undertaking, representation or warranty not included in the contract.

23. RELAXATION

No failure by a party to enforce any provision of the contract shall constitute a waiver of such provision or affect in any way a party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.

24. CESSION

Save that the Purchaser shall be entitled to cede any claim which it may have for breach of warranty on the part of the Seller, and / or for defective performance of any goods delivered by the Seller, neither party shall be entitled to cede any of its rights under the contract without the consent of the other party.

25. APPLICABLE LAW

The validity of the contract, its interpretation, the respective rights and obligations of the parties and all other matters arising in any way out of the contract or its performance, expiration or premature termination for any reason shall be determined in accordance with the laws of the Republic of South Africa.

26. VARIATION

No alteration or amendment to the contract or any termination, consensual cancellation or variation shall be of any force or effect unless recorded in writing and signed by all the parties.

27. INTERPRETATION

- 27.1 In these conditions the headings have been inserted for convenience only and shall not be used for nor assist or affect its interpretation.
- 27.2 In these conditions, unless the context requires otherwise
- 27.2.1 words importing any one gender shall include the other genders;
- 27.2.2 the singular shall include the plural and vice versa;
- 27.2.3 a reference to natural persons shall include legal persons and vice versa;
- 27.2.4 consent means written consent.