

Varcoe Refrigeration Limited — Terms & Conditions of Trade

1. Definitions

- 1.1 "Seller" shall mean Varcoe Refrigeration Limited and its successors and assigns.
- 1.2 "Buyer" shall mean the Buyer or any person or Seller acting on behalf of and with the authority of the buyer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer if a Limited Liability Seller on a principal debtor basis.
- 1.4 "Goods" shall have the same meaning as in section 2 of the Sale of Goods Act 1908 and are goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.6 "Price" shall mean the cost of the goods as agreed between the Seller and the Buyer subject to clause 5 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
- 2.2 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

3. Goods / Services

- 3.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.

4. Sale

- 4.1 The Goods shall be supplied in accordance with the description contained in the Seller's specification, letter of contract, or order forms; or any other documentation.

5. Price And Payment

- 5.1 At the Seller's sole discretion:
 - (a) The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
 - (b) The Price shall be the Price of the Seller's current Price at the date of delivery of the Goods/Services.
 - (c) The Price of the Goods shall be the Seller's quoted price which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quote within twenty-eight (28) days
- 5.2 Time for payment for the Goods and/or Service shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due as follows:
 - (a) A 30% deposit shall be paid upon acceptance of the quote, and the balance to be paid on completion of the work to be performed and the Goods being supplied.
- 5.3 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or any other method as agreed to between the Buyer and the Seller.
- 5.4 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.
- 5.5 The Price shall include the cost of any loading or packing of the Goods.

6. Delivery Of Goods

- 6.1 Delivery of the Goods shall be made to the Buyer's address and at the Buyer's expense. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or the Goods shall be delivered to the Buyer at the Seller's address.
- 6.2 If the Seller fails to deliver or makes defective delivery of all or part of the Goods this does not entitle the Buyer to cancel the contract.
- 6.3 When the Goods at the date of this agreement are in possession of a third person there is no delivery by the Seller to the Buyer unless and until such third person acknowledges to the Buyer that the Goods are being held on behalf of the Buyer subject to the issue or transfer by the Seller of documents of title to the Goods.

7. Risk

- 7.1 If the Seller retains property in the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.
- 7.2 If the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries. The Seller will apply the insurance proceeds as follows:
 - (i) first, in payment of the Price of the Goods that are damaged or destroyed, if unpaid;
 - (ii) second, in payment of the outstanding Price of any other Goods supplied to the Buyer by the Seller whether under the terms and conditions or otherwise;
 - (iii) third, in payment of any other sums payable to the Seller by the Buyer on any account;
 - (iv) fourth, any balance is to be paid to the Buyer.

8. Return Of Goods

- 8.1 Except as provided in this clause, the Buyer is not entitled to return the Goods to the Seller for any reason. For defective Goods which the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) repairing or replacing the Goods, or refunding the Price provided that:
 - (a) the Buyer must notify the Seller within 14 days of delivery that the Goods are defective;
 - (b) the Seller is given a reasonable opportunity to investigate the Buyer's claim;
 - (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Seller will not be liable to pay the Buyer any amount more than the amount (if any) the Seller received from the supplier for the defective Goods.

9. Defects

- 9.1 The Buyer shall inspect the Goods on delivery or installation and shall within fourteen (14) days of delivery or installation notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods and installation within a reasonable time following delivery. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

10. Warranty

- 10.1 The warranty period is (unless a different period is agreed to in writing) three (3) months on repairs to Goods.
- 10.2 The terms and conditions, time limits and other warranty information for Goods sold to the Buyer will be supplied to the Buyer by the Seller when all accounts are paid in full. The Warranty shall be the current warranty provided by the manufacturer of the product. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.
- 10.3 We will not be liable to repair any defective Goods and at our own discretion we may:
 - (a) notify the manufacturers of the Goods of any defect notified by you; and
 - (a) request the manufacturers to repair or replace any defective Goods.

11. Consumer Guarantees Act 1993

- 11.1 This agreement is subject, in all cases except where the Buyer is contracting within the terms of a trade/business (which cases are specifically excluded), to the provisions of the Consumer Guarantees Act 1993.

12. Default & Consequences Of Default

- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
- 12.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of Baycorp's costs of collection.
- 12.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 12.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services the following shall apply: An immediate amount equivalent to 10% of the amount overdue levied for administration fees which sum shall become immediately due and payable.
- 12.5 In the event that:
 - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due, Or;
 - (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, Or;
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer,
 - (i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become due and payable; and

- (iii) the Seller shall be entitled to reclaim any Goods in the Buyer's possession or control, which have been supplied by the Seller and to dispose of the Goods for its own benefit and shall be entitled to enter, directly or by its agents, upon any land or premises where the Seller believes the Goods which it has supplied are stored without being liable to any person.

13. Title

- 13.1 It is the intention of the seller and agreed by the Buyer that property in the goods shall not pass until:
 - (a) The Buyer has paid all amounts owing for the particular Goods, and
 - (b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 13.2 It is further agreed that:
 - (a) The Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller.
 - (b) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
 - (c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
 - (d) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue.
 - (e) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
 - (f) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
 - (g) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

14. Personal Property Securities Act 1999

- 14.1 Upon assenting to these terms and conditions the Buyer acknowledges and agrees that:
 - (a) These terms and conditions constitute a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999 ("PPSA"); and
 - (b) A security interest is taken in all Goods previously supplied by the Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer during the continuance of the parties relationship;
- 14.2 The Buyer undertakes to:
 - (a) sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby; not register a financing change statement (in accordance with Regulation 9) or a change demand (in accordance with Regulation 10) without the prior written consent of the Seller;
 - (d) give the Seller not less than 14 days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice); and
 - (e) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.3 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA

15. Security And Charge

- 15.1 Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever:
 - (a) Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) To give effect to the provisions of clause 15(a) to (b) inclusive hereof the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee, namely EC Credit Services Limited as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Seller and/or EC Credit Services Limited shall think fit in his/hers/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

16. Cancellation

- 16.1 The Seller may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price for those Goods. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

17. Privacy Act

- 17.1 The Buyer and the Guarantor/s (if separate to the Buyer) authorises the Seller to collect, retain and use any information about the Buyer, for the purpose of assessing the Buyer's creditworthiness or marketing any Goods and Services provided by the Seller to any other party.
- 17.2 The Buyer authorises the Seller to disclose any information obtained to any person for the purposes set out in clause 17.1
- 17.3 Where the Buyer is a natural person the authorities under (clause 17.1 & 17.2) are authorities or consents for the purposes of the Privacy Act 1993.

18. Unpaid Sellers Rights To Dispose Of Goods

- 18.1 In the event that:
 - (a) the Seller retains possession or control of the Goods; and
 - (b) payment of the Price is due to the Seller; and
 - (c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and
 - (d) the Seller has not received the Price of the Goods,then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

19. Lien & Stoppage in Transit

- 19.1 Where the Seller has not received or been tendered the whole of the Price, or where a bill of exchange or other negotiable instrument or the like has been dishonoured, the Seller shall have:
 - (a) a lien on the Goods;
 - (b) the right to retain them for the Price while the Seller is in possession of them;
 - (c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and
 - (d) a right of resale.
 - (e) the foregoing right of disposal.

20. General

- 20.1 If any provision of these terms and conditions 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.
- 20.2 All Goods and Services supplied by the Seller are subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law which affect the Goods or Services supplied.
- 20.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 20.4 The Buyer shall not set off against the Price amounts due from the Seller.
- 20.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 20.6 The Seller is entitled at any time to assign to any other person all or part of the debt owing by the Buyer to the Seller without the prior consent of the Buyer.
- 20.7 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Buyer of such change.
- 20.8 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.