



## CLIMTECH A/S: STANDARD TERMS AND CONDITIONS OF SALE

1.0 The following Terms and Conditions shall apply to all goods purchased and services performed to the Confirmation of Order. The terms and conditions take precedence over Buyer's supplemental or conflicting terms. Buyer's acceptance of the Products from Seller shall be deemed to constitute the acceptance of the terms and conditions herein.

1.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written Purchase Order of the Buyer which is accepted by the Seller, subject in either case to these Conditions which shall govern.

1.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

1.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. By accepting the quotation, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations that are not so confirmed.

1.4 If any technical assistance or advice, both written and verbally, is given to the Buyer without a signed consultancy agreement about storage, use of Goods, application and test set-up, such assistance and advice is given free of charge and only as a recommendation to Buyer. Seller shall not be held liable for the content or Buyer's use of such technical assistance and advice nor shall any statement made by Seller's representative in connection with the Product or Services constitute a representation or warranty, express or implied.

1.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller

## **2. Orders and cancellation**

2.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by the Seller's authorised representative.

2.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods.

2.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's Confirmation of Order.

2.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

2.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller. The Buyer shall return all Goods in perfect condition and compensate the Seller for expenses incurred by the Seller as a result of any cancellation as a minimum shipping cost, boxing and labor cost to repack Goods. In case of any wear and tear a compensation to seller shall be agreed upon however never less than 5% of the order price.

## **3. Price**

3.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's price list current at the date of



acceptance of the order. Where the Goods are shipped, changes in shipping cost can be added to the Order. All prices quoted are valid for 30 days unless stated by the Seller on the quotation.

3.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller such as, without limitation, any foreign exchange fluctuation, changes in shipping costs, alteration of duties, significant increase in the costs of labor, materials or other costs of manufacture.

3.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller are exclusive of shipping costs and any applicable value added tax that the Buyer shall be additionally liable to pay to the Seller.

#### **4. Terms of payment**

4.1 Subject to any special terms agreed in Writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time before or after delivery of the Goods. All Invoices are payable as specified in the Invoice, usually 30 days after receipt of invoice.

4.2 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

- 4.3.1 cancel the contract or suspend any further deliveries to the Buyer;
- 4.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and
- 4.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 0,7 per cent per month until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

4.3 In the event that the Seller shall cancel the order under the provisions of Clause 4.2 above the Buyer shall indemnify the Seller in full against all loss (including loss of profit), and return the Goods and compensate the Seller as per 2.6.

#### **5. Delivery, delay, and transfer of ownership**

5.1 Delivery of the Goods shall be made by the Seller arranging the shipment by courier to the Buyer's premises or by Buyer collecting the Goods at the Seller's premises.

5.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer. The Seller shall be entitled to make part delivery of the Goods at any time.

5.3 Where the Goods are delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

5.4 If the Seller fails to deliver the Goods for any reason, other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the cost of the Order to the Buyer.

5.5 If the Buyer fails to take delivery of the Goods or fails to give adequate delivery instructions at the time stated for the Seller may: store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or cancel the order and take back the goods. Buyer is to compensate Seller as per 2.6.



5.6 Risk of damage to or loss of the Goods shall pass to the Buyer: In the case of Goods to be delivered at the Seller's premises arranged by the Seller, at the time when the Buyer notifies the shipping company of successful receipt of the Goods: or in the case when the Buyer arranges transportation of Goods being collected at the Seller's premises at the time of the shipping company taking possession of the Goods.

5.7 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the ownership of the Goods shall not pass to the Buyer until the Seller has in full the price of the Goods and all sums due from the Buyer.

5.8 Until such time as the ownership of the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored protected and insured and marked as the Seller's property.

5.9 Until such time as the ownership of the Goods passes to the Buyer the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

5.10 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) become due and payable.

5.11 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and notifying to the Seller the requirements of any such legislation or regulations requiring action on the part of the Seller and for the payment of any duties in connection with the Goods.

5.12 The Buyer shall be responsible for testing and inspection of the Goods before acceptance. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of damage during transportation.

## **6. Warranty**

6.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with Seller's specification subject to such tolerances as are reasonable and as are normally accepted in the trade and will be free from defects in material and workmanship at the time of shipment.

6.2 The above warranty is given by the Seller subject to the following conditions:

- 6.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from transportation:
- 6.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), lack of understanding how to use Goods, misuse or alternation or repair of the Goods without the Seller's approval.
- 6.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
- 6.2.4 the Seller shall be under no liability for the Buyers use, test set-up and test result using the Goods.



6.3 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with Sellers specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 30 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered.

6.4 Any claim by the Buyer which is based on short delivery or non-delivery shall be notified to the Seller in Writing (in the case of short delivery) within 7 days of delivery and (in the case of non-delivery) within 30 days of receipt by the Buyer of the Seller's Invoice for the goods which the Buyer claims have not been delivered. If the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject any goods that have been delivered and the Seller shall have no liability for such short delivery or non-delivery.

6.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions the Seller shall be entitled to replace the Goods or (refund to the Buyer the price of the Goods) (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

6.7 Buyer shall not be entitled to, and Seller shall not be liable for, loss of profits or revenue, promotional or manufacturing expenses, overhead, business interruption costs, loss of data, Removal or reinstallation cost, injury to reputation or loss of buyers, punitive damages, IPR infringement, loss of contracts or orders or any indirect special incidental or consequential damages of any nature. Buyers recovery from Seller for any claim shall not exceed the purchase price paid for the affected products irrespectively of the nature of the claim whether in contract, tort, warranty or otherwise. Buyer will indemnify, defend, and hold Seller harmless from any claims based on Sellers compliance with Buyers design, specifications and instructions and modification of any products by anyone other than seller or in use with combination with other products.

6.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control including but not limited to war, embargo, environmental disasters, strike, civil disturbance, delay by courier, power failure or machine breakdown, difficulties in obtaining raw materials, labor (also 3<sup>rd</sup> parties) import or export regulations, local or government restrictions, insolvency of Buyer:

## **7 General**

7.1 This clause applies if: The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or goes into liquidation; or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business; or the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly. If this clause applies, then, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered, but not paid for, the price shall become immediately due and payable.

7.2 The laws of Denmark shall exclusively govern any dispute between Buyer and Seller, Buyer may not assign this agreement without the prior written consent of Seller. This agreement is binding on successors.