



THE HEART OF FRESHNESS

GENERAL TERMS AND CONDITIONS

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GENERAL TERMS AND CONDITIONS

(Effective from 1 December 2012)

BITZER Australia Pty. Ltd.

New Zealand Branch

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Goods and services (including without limitation all consultation, design, commissioning and other engineering and advisory services whether in connection with the sale of goods or otherwise) are supplied to New Zealand customers by BITZER Australia Pty. Limited and associated companies (BITZER) on the following terms and conditions to the exclusion of any other terms and conditions. These terms and conditions apply for goods or services supplied on or after 1 December 2012.

1 **Contract**

Each contract for the supply of goods and/or services shall comprise the express terms agreed between the customer and BITZER as specified in the applicable quotation/order confirmation/invoice/other documentation and these terms and conditions, together with:

- a) Any further written specification or quotations or other details, terms or conditions in other documentation which may be expressly agreed and included by reference or attachment in writing.
- b) Any variation or exclusion of these terms and conditions which may be expressly agreed in writing.

No other terms or conditions are to be made or implied. The customer acknowledges that BITZER may amend these terms and conditions from time to time by posting the amended terms and conditions on its website. The amended terms and conditions will be effective from the date of posting on the website and the customer is responsible for ensuring it is familiar with BITZER's current terms and conditions with each new order.



2 Acceptance

Any written acceptance of an estimate or quote made by BITZER (within the period specified for acceptance and subject to any other conditions within the estimate or quote) or any other instruction or direction to proceed with the supply of the goods and/or services on which BITZER, at its discretion, may act, shall constitute a binding contract and acceptance of these general terms and conditions.

List prices are subject to change without notice. Delivery of the goods and/or services remains subject to any act, omission, or failure that arises from any cause reasonably beyond BITZER's control including, but not limited to, acts of God, shipping delays, delay in third party supplies or services, strikes, lockouts, industrial unrest, riots, acts of war or terrorism, epidemics, governmental action, fire, communication line failures, power failures, earthquakes or other disasters (**force majeure event**).

3 Price / Quotations

Unless expressly stated to the contrary in a quotation issued by BITZER, each quotation is subject to acceptance within 30 days after which it is deemed to have expired and BITZER reserves the right to re-submit a current quotation. Unless otherwise stated all prices are in New Zealand Dollars and are based on the supply of goods and/or services ex-works (BITZER Auckland premises or other facility confirmed to you) and are exclusive of:

- a) Goods and Services Tax (GST), which is payable by the customer.
- b) Insurance (if any).
- c) Freight and Handling charges relating to delivery of items to meet the customer's requirements (if any).
- d) Any other taxes or levies.

4 Payment

Unless otherwise agreed in writing, full payment of all goods and/or services is to be made on or before the 20th of the month following the date of invoice. Payment shall be made in full and without set off.

BITZER shall be entitled to charge interest on any late payment amount at the rate interest is charged by its bank in relation to commercial overdraft facilities plus 2%, calculated on a daily basis from the due date to the date of payment and compounding monthly. Interest shall accrue after as well as before judgement and shall be payable on demand.

Failure to pay in accordance with these terms and conditions entitles BITZER, at its discretion, to charge a 1.5% late payment fee, refuse delivery of further goods or services and to demand immediate payment of any other amounts due by the customer.

Any expenses, disbursements or legal costs incurred to enforce any rights contained in this contract shall be paid by the customer on demand, including any reasonable solicitor's fees or debt collection agency fees.

5 Delivery and Risk

Unless otherwise agreed, BITZER shall have the right to select the method of deliver and the carrier. Any times quoted for delivery or installation are from the date of receipt by BITZER of a written purchase order to proceed and of all necessary information to enable BITZER to undertake the order. All such times are to be treated as estimates only not involving any contractual obligation and BITZER's implied obligation to deliver within a reasonable time is subject to BITZER not being delayed by any cause whatsoever beyond BITZER's control including but not limited to any force majeure event or to instructions or lack of instructions from the customer.

BITZER shall not be liable for any loss arising from delay or failure of delivery, including without limitation any consequential loss to the customer whether caused by the default or negligence of BITZER in delivery or otherwise.

Goods that are held at any of BITZER's premises at the request of the customer, will be liable to costs incurred for the safekeeping, protection and maintenance of those goods. These costs may include packaging, storage and rent, insurance and/or any other charge BITZER reasonably considers desirable to protect and maintain the goods in saleable condition.

Risk in the goods shall pass to the customer when the goods are collected by the customer or delivered to the agreed place of delivery. No claim for loss or damage up to the time of delivery may be made unless notification of such loss or damage is given in writing to BITZER and, where relevant, the carrier within seven days of delivery. No such claim will be accepted where the customer has undertaken insurance of the goods during transit or transported the goods itself.



6 Return Goods

BITZER reserves the right to accept or reject the return of goods at its discretion. Credit (if granted) will only be allowed on goods returned within 30 days of the invoice date and with both the product and packaging in new condition. If an order has been executed correctly, and return of goods is accepted, a charge of 10% or \$20.00 of the purchase price (whichever is the larger) will be made to cover handling, restocking, documentation etc. Goods not normally stocked or specifically manufactured to the customer's requirements are not returnable.

7 Warranty & Liability

Subject to the qualifications herein BITZER warrants that all goods will be supplied free from defects in material and workmanship for a period of 1 year from date of invoice (**warranty period**). BITZER's obligation under this warranty is limited to repairing or exchanging of any faulty part or good that is returned to its premises within the warranty period, after which all liability on BITZER ceases.

This warranty is valid and the customer is entitled to claim under this warranty only if:

- a) The goods and/or services are paid for in full on or before the required payment date.
- b) All installation has been carried out strictly in accordance with BITZER guidelines.
- c) The goods have been fully maintained strictly in accordance with BITZER guidelines.
- d) The goods have not been modified (except on written instruction from BITZER).
- e) The customer returns the goods to BITZER within 14 days of failure.
- f) The goods are used within the software limitations produced by BITZER.
- g) The goods are supplied and used within New Zealand.

If the goods are refrigerant products, the customer must require that the end user of the goods has procedures in place to avoid damage if the refrigeration fails for any reason and the customer indemnifies BITZER from any claim, loss, cost or expense whatsoever made against or incurred by BITZER and arising directly or indirectly there from.

No other warranties or representation are made or implied in respect of supply of any goods and/or service by BITZER except as expressly stated or as may be required and imposed in law. To the extent that any warranties or representations are implied by law or otherwise and capable of being disclaimed or negated, those warranties and representations are disclaimed and negated.

Under no circumstances will BITZER be liable for any indirect, consequential or economic loss or special damages, including but not limited to costs arising from labour, travelling, transport, loss of goods, loss or replacement of refrigerant, penalties of any description, loss of profit, or any cost tax, levy or fee (including under any emissions trading or carbon tax regime or similar), or be responsible for late delivery of warranty replacement goods due to any force majeure event, and the customer shall indemnify BITZER from any claim or demand from other parties in respect of the use or application of the goods and/or services by the customer or others.

To the extent that any liability shall otherwise be determined, the liability of BITZER shall be limited to the lesser of the contract price or the amount actually paid to BITZER for the goods and/or services so supplied to the customer.

Replacement goods will be invoiced to the purchaser's account. On return of faulty goods to BITZER and subject to warranty inspection a credit will be issued in accordance with BITZER's policy.

Where BITZER provides any design or calculations for the installation and use of any goods it has been based solely upon the information provided by the customer and any assumptions specified by BITZER. The customer acknowledges that any such design has been prepared by BITZER in good faith but without full knowledge of the performance expectations of the end user or of the circumstances (construction, materials, use and various environmental factors etc) which will inevitably impact upon the performance of the goods. BITZER is under no obligation to confirm, check or undertake any enquiry in relation to the suitability of any design proposed by BITZER. The customer is fully responsible for verifying any information provided to BITZER for such purposes and for ensuring the design proposed is appropriate for the intended use of the goods. The customer acknowledges that BITZER has no liability whatsoever in relation to or arising from any proposed design and indemnifies BITZER from any claim, loss, cost or expense whatsoever made against or incurred by BITZER and arising directly or indirectly there from.

The customer warrants that it acquires the goods or services supplied by BITZER for business purposes only and to be re-supplied in the course of its trade and not for any personal, domestic or household use. The guarantees and warranties in the Consumer Guarantees Act 1993 shall not apply to this contract or in respect of the goods or services supplied by BITZER.



8 Property and Security Interests

The title of all goods and/or services supplied by BITZER passes to the customer only when the customer has made payment in full for all goods and/or services provided by BITZER. In the event goods and services are fixed or incorporated into other property by the way of manufacture or assembly process by the customer or a third party the title to the goods and services shall remain with BITZER until full payment has been made. Where the goods and/or services are a part of or constitute any part of new goods and/or services the whole good and/or service shall be deemed to be assigned to BITZER until full payment is made for all goods and/or services supplied.

In the event of non payment the customer irrevocably authorises BITZER and its servants to enter any premises controlled by the customer to search for the goods and to remove them (if necessary, after separating them from any item into which they have been incorporated).

Until the goods and/or services are paid for the customer shall:

- a) Maintain possession of goods directly or through a recognised independent storage agent in a distinct and identifiable manner from other goods, including other goods by BITZER for which payment has been made.
- b) Store the goods in a safe and secure manner and keep the goods insured for the full price value, with any insurance proceeds received to be held in trust and promptly remitted to BITZER.
- c) Not disassemble, alter, add to or incorporate with any other goods in any manner except in the ordinary course of trade and where the goods are so altered or added to or incorporated with other goods then to hold and deal with such composite goods under a constructive trust for BITZER.
- d) Not to sell the goods (including any goods which have been altered or goods to which those goods have been added to or incorporated with) other than to bona fide third parties in the ordinary course of trade and upon the strict condition that the proceeds of the sale (including proceeds for any other work or service supplied to that third party) are retained in trust for BITZER to the extent of the unpaid price and such amount promptly remitted to BITZER.
- e) Not allow the goods to be charged or subject to risk of seizure or lien in any manner, or to otherwise deal with the goods in any manner inconsistent with the interests of BITZER as owner and unpaid seller.

The customer acknowledges the these terms and conditions create a security interest in all present and after acquired goods supplied or to be supplied by BITZER and any proceeds of the sale of the goods as security for all the customer's obligations to BITZER pursuant to the Personal Property Securities Act 1999 (**PPSA**) and that BITZER may register a financing statement to perfect its security interest in the goods delivered or to be delivered to the customer in accordance with the provisions of the PPSA. The customer shall provide all information, execute or arrange for execution of all documents and do all other things BITZER may require to ensure that BITZER has perfected first ranking security interest in the goods under the PPSA. The customer hereby gives BITZER power of attorney to complete any such documentation. The customer shall immediately on request by BITZER, procure from any person considered by BITZER to be relevant to its security position, such agreements and waivers as BITZER may at any time require. The customer shall immediately notify BITZER of any change in the customer's name, address details and any other information provided to BITZER to enable BITZER to register a financing change statement if required.

9 Intellectual Property Rights

The customer does not by any reason of the supply of any goods and/or service by BITZER acquire any rights to the copyright, patent, trade mark, design, or other intellectual property rights in the goods or to any of the proprietary rights or interest comprised in the goods or services so supplied.

The customer shall indemnify BITZER from any claims for infringement of intellectual property rights of third parties which might result from goods or parts or components of those goods supplied by or through the customer, or services under the directions or to the specifications of the customer.

10 Privacy Act

The customer gives authority to any person or company to provide BITZER with any information as required in response to creditworthiness inquiries concerning the customer. The customer agrees that BITZER may furnish this information to any third person without prior authority from the customer.

Information collected by BITZER will be used by it, its agents and related entities for the purpose of providing and obtaining offers and services relating to the supply its products. Information may also be used by BITZER for its own marketing or debt collection purposes (including disclosure to a credit reporting agency). Customers consent to the collection, use and disclosure of personal and other information in the manner set out above. Customers are entitled to access to (and correction of) their personal information collected by BITZER.



11 General

Except in respect of goods and/or services supplied to the particular proprietary requirements of the customer the supply of all goods and/or services to the customer shall be on a non exclusive basis and BITZER reserves the right to supply any goods and/or services to other parties at such prices and terms of sales as BITZER may determine in its complete discretion and without limitation.

The law and jurisdiction of New Zealand shall apply to the sale and supply of all goods and/or services by BITZER.



BITZER New Zealand

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