

1. Offers

- 1.1. Any offers made by us, which do not contain any time limit for acceptance, are not binding, i.e. non-committal. At any rate, they are subject to written confirmation.

2. Conclusion of Contract

- 2.1. The contract is deemed concluded when, on receipt of an order, we confirm its acceptance in writing. Verbal agreements are not valid, unless confirmed in writing.
 Differing conditions of Purchaser are valid only as far as they are expressly accepted by us in writing

3. Fundamentals of Offer, Scope and Execution of Delivery

- 3.1. Offer and project are worked out in accordance with Purchaser's indications.
 3.2. The scope and execution of delivery shall be as specified in our confirmation of order. Material or performances not referred to therein shall be charged separately.

4. Technical Documents

- 4.1. Technical documents such as drawings, descriptions, illustrations and the like and any weight data shall serve as an approximate indication only, unless they have expressly been specified as binding; we reserve the right to make any alterations considered necessary.
 4.2. Technical documents shall be treated confidentially by Purchaser. They remain our exclusive intellectual property and may be neither copied nor reproduced nor communicated to a third party in whatever way nor used for the construction of the goods or of parts thereof without authorisation. Reference is in particular made to sections 5 and 23 of the Swiss Law on Unfair Competition.
 Such documents may, however, be used for operation and maintenance.
 4.3. For pressure vessels we supply, if desired, the descriptions required for any licence application, if necessary, a general installation lay-out and the necessary instructions for the foundations.
 4.4. Any documents submitted with tenders, which do not result in an order, shall be returned to us on request.

5. Regulations at Destination

- 5.1. Purchaser must inform us of all laws, governmental and other regulations that are to be observed during the execution of the contract.

6. Prices and Value Added Tax

- 6.1. Unless otherwise stipulated, our prices are net, ex works, not including packing and VAT, in freely available Swiss Francs and without any deduction whatsoever. All additional costs, such as charges for packing, carriage, insurance, export, transit and import fees and other permits as well as any certification shall be borne by Purchaser. Purchaser shall also be liable for all kinds of taxes, rates, fees and customs duties. Where we have included in our offer or delivery price or separately indicated in our offer or confirmation of order the charges for packing, carriage, insurance and other additional costs, we reserve the right to adjust our prices if the tariffs, on which they are based, are modified.
 6.2. After conclusion of contract adjustments of prices are made provided that
- sliding prices have been agreed
 - delivery term is subsequently extended for one of the reasons stated in section 9.2.
 - the extent of the agreed delivery or performance has been modified.
 - the material or the execution have been modified because the documents submitted to us by Purchaser did not correspond to the actual conditions or was wrong or incomplete.
 - there are extraordinary circumstances not foreseeable by us.
 - fault of Purchaser is involved.

7. Terms of Payment

- 7.1. Payments shall be made by Purchaser to FRIOTHERM, pure net, without any deduction whatsoever such as discount, expenses, taxes and fees, in accordance with the conditions stated in the confirmation of order. Payment is deemed effected as soon as the amount invoiced has been made freely available in the currency shown in the invoice to FRIOTHERM at its headquarters.
 Where partial consignments are invoiced, payment shall be made for each individual consignment in accordance with the agreed terms of payment.
 7.2. Payment deadlines must also be met if, for reasons beyond our control, transportation, delivery, installation, bringing into service or acceptance of delivery are delayed or impossible. Purchaser shall not reduce, withhold or set off any payments on account of complaints, claims or counter-claims not accepted by us. Payments shall also be made if parts of minor importance are missing or re-treatment to the delivery is needed, which do not prevent the goods from being used.
 7.3. If Purchaser does not observe the arranged payment terms, it shall be in default without formal reminder. Purchaser shall pay, as from the due date of the invoice, interest for late payment of 7%. Payment of such interest does not release Purchaser from his obligation to make payments in accordance with the contract.
 7.4. V.A.T. shall be borne by Purchaser.

8. Reservation of Titles Clause

- 8.1. Title to the entire delivery shall remain with FRIOTHERM until Purchaser has paid for the goods completely and in accordance with the contract. At

conclusion of contract, we are empowered by Purchaser to register, at Purchaser's cost, the title to the goods delivered to Purchaser and to meet all formalities referring thereto, in order to safeguard our claims. Purchaser shall, at its own cost, maintain the delivered goods and take out an insurance to our benefit against theft, breakage, fire, water and other damage during the period of the reservation of title. It shall also take all measures necessary to prevent our claims to title from being prejudiced or cancelled.

9. Delivery Term

- 9.1. Delivery term starts running with the conclusion of the contract, which includes the procuring of all official formalities, such as import and payment authorisations, the remittance of payments and provision of securities, if any, required at the time of the placement of order, as well as the settlement of all essential technical points. The delivery date shall be deemed duly observed if the goods are ready in the works by the time of its expiration.
 9.2. The delivery term is adequately extended:
- a) if information necessary for the execution of the order is not given to us in time or if Purchaser makes additional modifications that cause delay in delivery;
 - b) if impediments arise which, despite our due care, we cannot avoid, such as epidemics, mobilisation, war, riots, strikes, picketing and lock-outs, serious breakdowns, accidents, labour-conflicts, delayed or deficient delivery of necessary raw materials, of half-finished and finished products, cases of important components becoming defective in the manufacturing process, official or other measures of any kind, transport difficulties, acts of God;
 - c) if Purchaser is behind schedule with the work it has to carry out or delays in complying with its contractual obligations, in particular if it fails to meet the arranged payment conditions.
 - d) if Purchaser fails or delays in providing the material or personnel necessary for the works to be executed by us.
- 9.3. A penalty for late delivery can only be claimed if expressly stipulated in a written agreement, signed by both parties at the conclusion of the contract. Penalty is not due, unless it can be proved that the delay is our fault and only in so far as Purchaser can show that it has suffered a loss as a result of late delivery. Where Purchaser receives a replacement delivery, it has no claim to any penalty.
 9.4. Any such penalty shall not exceed ¼ percent for each full week's delay and shall in total not exceed 5% of the sales price ex works of the delayed consignment (i.e. excluding all expenses for packing, customs duties, fees of any kind, installation, etc.). Where delivery terms of more than six months have been stipulated, Purchaser has no claim to penalty during the first two weeks' delay.
 9.5. In the event of late delivery, Purchaser is not entitled to claim damages or cancel the contract.

10. Testing and Acceptance of Goods

- 10.1. Testing of the goods before shipment is carried out in accordance with our test regulations and at our cost. Additional tests shall be stipulated specifically on conclusion of the contract and shall be Purchaser's cost.
 10.2. Purchaser shall examine the goods on completion, as a rule within three months as from completion at the latest, and notify us immediately in writing of any defect for which we have to answer in accordance with our contractual obligations. Where it fails to do so, the extent of the delivery and the delivery itself are deemed approved of.
 For defects not recognisable up to this time, FRIOTHERM remains liable and Purchaser's claim for defects according to item 14 holds good; however, FRIOTHERM is only liable if Purchaser notifies it of the defects immediately upon their discovery.
 10.3. Common acceptance tests are carried out only if they have been agreed in writing with Purchaser. As far as circumstances allow, such tests will be carried out in our works and shall be applied solely to establish the following:
- in the case of compressors: that the stipulated output and production as well as power requirement and efficiency are given, in so far as this can be performed by the means available on our test bench;
 - in the case of reciprocating compressors: that the machine functions properly under the operating conditions attainable with our test bench facilities;
 - in the case of pressure containers etc.: that their components or possibly the whole vessel are tight under hydraulic pressure and that the material corresponds to the specifications of the Swiss Association for Technical Inspections or, if explicitly stipulated, to the specifications applying in the country where the vessels etc. are erected. The said pressure tests are, if possible, carried out together with an inspector of the Swiss Association for Technical Inspections. The test certificate issued by him will be handed over to Purchaser.
- If, for reasons beyond our control, the acceptance test cannot be carried out within the specified time, then the qualities to be determined by these tests shall be deemed proved.
 10.4. If, in one of such acceptance tests, it is discovered that our delivery does not comply with the terms of the contract, Purchaser shall give us, without delay, the opportunity to remedy any defects
 10.5. Purchaser shall have no other rights in case of deficient delivery, in particular to claim damages and to cancel the contract

11. Packing

- 11.1. Packing shall be charged separately and is not returnable. However, if it is declared our property it shall be returned to us carriage paid.

12. Transfer of Risk and Benefit

- 12.1. Risk and benefit are transferred to Purchaser when the goods are ready for shipping, however, at the time of the delivery ex works at the latest, even if delivery is carriage paid, cif, fob, or under similar clauses or including erection, or if the transport is arranged and supervised by us. If dispatch is delayed or prevented by circumstances beyond our control, the goods will be stored at Purchaser's expense and risk.

13. Transport and Insurance

- 13.1. Purchaser shall notify us in time of any special request concerning shipping and insurance. The transport of the goods is carried out on Purchaser's expense and risk. Complaints regarding transport shall be submitted by Purchaser to the last carrier immediately on receipt of the goods or of the shipping documents.
- 13.2. Purchaser shall take out insurance against damage of any kind. Even if insurance cover is arranged by us, it shall be taken out on behalf of Purchaser and at its expense and risk.

14. Erection

- 14.1. Where we also undertake the erection, Purchaser shall supply the necessary auxiliary staff at its own cost. In addition, costs for scaffolds, lifting gears, lights, fuel, welding gazes and for the hire of special tools shall be borne by Purchaser.
- As far as execution and construction of refrigerating facilities and thermo-pumps are concerned, we supply the delivery with plans of insulation, engineering and erection as well as the appropriate instructions in writing. These documents shall exclusively govern the execution. Our service engineers must be provided with lockable, dry and lit rooms while they are fitting the installations.
- Where erection and bringing into service cannot be carried out at one go due to circumstances occurring on Purchaser's side, the additional costs incurred shall be borne by Purchaser according to SIA norm 380/7 point 4.305
- 14.2. Where we also undertake the erection, our general conditions of erection shall apply in addition to the present Conditions.

15. Warranty

- 15.1. During the stipulated period of warranty, we undertake on Purchaser's written request to remedy or replace as soon as possible and at our option all parts of the goods delivered that can be proved to be damaged or unfit for use due to bad material, faulty design or poor workmanship. Replaced parts shall become our property.
- 15.2. We shall only bear the costs of repairing or replacing the defective parts in our works. If, for reasons beyond our control, such parts cannot be repaired or replaced in our works, all additional costs arising therefrom shall be borne by Purchaser.
- 15.3. Purchaser shall have no other rights, in particular on account of deficient delivery, or to claim damages and to cancel the contract.
- 15.4. We warrant that the goods are free from defects in material and workmanship until the expiration of 12 months. Warranty begins when the goods are ready for shipping or, where we carry out their erection, from its completion. If dispatch, erection or bringing into service are delayed for reasons beyond our control, warranty is limited to 18 months as from the notification that the goods are ready for shipment.
- 15.5. Any parts replaced are warranted for a new time of warranty; it ends not later than 24 months after the beginning of the warranty period for the main goods or, if dispatch, erection or bringing into service is delayed for reasons beyond our control, not later than 30 months after the main goods are ready for shipping.
- 15.6. Warranty does not cover damage resulting from normal wear and tear, faulty maintenance, failure to observe the operating instructions, incorrect operation, excessive use, unsuitable means of operation, chemical or electrolytic impacts, water which is contaminated, contains sand or is liable to form incrustations, corrosion, erosion, cavitation and the like, unsatisfactory foundation, building and erection works not carried out by us and other reasons beyond our control.

In particular, warranty is excluded:

- In the case of refrigerating machinery: any and all damage caused by the use of unsuitable compressor lubricants and impure refrigerants, supplied by a third party, and by the employment of cooling vehicles not in accordance with the instructions, furthermore damage due to wet suction conditions which originate from components not supplied by us;
 - In the case of pressure vessels etc.: damage due to failure to observe our servicing and maintenance instructions and the rules generally accepted as applying to boilers, in particular when such damage is to be attributed to the use of unsuitable fuels, unsuitable water-purification equipment, abnormal service, overloading etc. Warranty ceases if Purchaser or a third party carries out alterations or repairs to the goods without our written consent, or if Purchaser fails to take immediately all suitable measures to limit the damage and to enable us to remedy the defect.
- 15.7. Warranty ceases if Purchaser or a third party carries out alterations or repairs to the goods without our written consent, or if Purchaser fails to take

immediately all suitable measures to limit the damage and to enable us to remedy the defect

- 15.8. We only warrant that the goods and installations are free from defect in material and workmanship if the required maintenance works are carried out by the FRIOTHERM staff during the period of warranty in order to safeguard the perfect functioning of the installation. Warranty ceases if the installations are not serviced or serviced by a third party.
- 15.9. We accept liability for goods supplied by subcontractors only to the extent of their warranty obligations.
- 15.10. The performances are governed by the data stated in the confirmation of order, Tolerances are according to the regulations for refrigerating machinery of the German Association for Refrigeration Engineering (Deutscher Kältetechnischer Verein, DKV). Sufficient insulation duly complying with the regulations, normal use of the installation, immediate closing of the doors, not exceeding the allowed maximum charging and temperature of the goods to be cooled are the prerequisites. Unless otherwise expressly provided, a temperature of +25° C is deemed the maximum average ambient temperature per day, the maximum temperature of the cooling water should not exceed +15° C in the case of fresh water or +25° C in the case of cooling tower water.
- 15.11. Replacement of the cooling medium and its disposal is not covered by our warranty.
- 15.12. Warranty for spare parts in service: the period of warranty for parts replaced or repaired by FRIOTHERM is six months and the date of commencement is the replacing, the completion of the repairs or the acceptance. The limited liability as stipulated under section 9 shall also apply to any spare parts.

16. Liability

- 16.1. We undertake to carry out the order in accordance with the terms of the contract and to meet our warranty obligations. Any claims of Purchaser, except for those expressly stated herein, notwithstanding their legal grounds, in particular claims not expressly stipulated for damages, reduction of price or rescission of contract are excluded. In no event shall Purchaser be entitled to ask for compensation for damages not originating in the delivered good itself, such as loss of production, of cooled goods, of use, of commissions, of benefits or for any other indirect or direct consequential damage.
- Such exclusion clause is void in case of wilful act or gross negligence of Supplier, however, it applies to wilful act or gross negligence committed by auxiliary staff. We reserve the right to entrust a third party with the entire offer or parts thereof without the Purchaser's express consent.

17. Place of Performance

- 17.1. The place of performance is Frauenfeld both for us and for Purchaser, even if delivery is made carriage paid, cif, fob, or under similar clauses. If we also carry out the erection, the place of erection shall be deemed the place of performance only in respect of our erection obligations.

18. Jurisdiction and applicable Law

- 18.1. The Frauenfeld law courts shall have exclusive jurisdiction over any dispute arising out of our legal relationship with Purchaser. We reserve the right, however, to also commence legal action at Purchaser's place of business.
- 18.2. The legal relationship shall be governed by Swiss law. Applicability of the Vienna Convention on Contracts for the International Sale of Goods shall be ruled out.

19. Validity

- 19.1. These General Conditions of Sale and Delivery are valid in all respects not otherwise settled by mutual written agreement. Special conditions of Purchaser which contradict with the present Conditions are not valid, unless we have accepted them in writing.

20. Final Clauses

- 20.1. Any modifications to the contract are only valid if agreed upon in writing. Should any clause herein prove to be null and void, this shall not affect the validity of the other clauses. The parties undertake to replace invalid provisions by new ones, which serve best the economic objective of the contract.