REFTECH REFRIGERATION
PLANTS & SERVICE

GENERAL CONDITIONS OF SALE AND DELIVERY OF REFRIGERATION EQUIPMENT AND COMPONENTS

1 PREAMBLE

1.1 These General Conditions shall apply to all contracts for the sale and delivery of refrigeration equipment and components, save as varied by express agreement accepted in writing by both parties.

2 FORMATION OF CONTRACT

2.1 The Contract shall be deemed to have been entered into when, upon receipt of an order, REFTECH A/S has sent an Order Confirmation in writing to the Purchaser.

3 PRODUCT INFORMATION

3.1 All information and data contained in product brochures and price lists shall be binding only to the extent that such information and data are by reference expressly included in the Contract.

4 DRAWINGS AND DESCRIPTIONS

4.1 All drawings and technical documents relating to the equipment and components or their manufacture submitted by REFTECH A/S to the Purchaser, prior or subsequent to the formation of the Contract, shall remain the property of REFTECH A/S. Drawings, technical documents or other technical information received by the Purchaser shall not, without the consent of REFTECH A/S, be used for any purpose other than the erection, commissioning, operation or maintenance of the equipment and components. Nor shall such drawings, documents or information be used or copied, reproduced, transmitted or communicated to any third party without the consent of REFTECH A/S

5 PRICES

5.1 All prices are based on e.g. the agreed scope of supply, delivery times, modes of delivery and terms of payment.

5.2 REFTECH A/S reserves the right to adjust prices if any changes occur in any of the factors referred to above in Clause 5.1.

5.3 Price adjustments made pursuant to the provisions of Clause 5.2 shall without delay be communicated to the Purchaser in writing, whereupon such adjustments shall become binding upon the Purchaser.

6 PAYMENT

6.1 Unless otherwise agreed, payment shall be effected as follows:

a) 30 per cent of the contract sum as down payment within one week from the date on which the Contract was entered into.

b) 70 per cent of the contract sum at the time of dispatch by way of an irrevocable confirmed Letter of Credit. The Letter of Credit shall be opened in favour of REFTECH A/S with a recognised bank, advised through and confirmed by a first-class bank acceptable to REFTECH A/S and shall be payable at sight with the said first class bank against shipping documents or against "Forwarder's Certificate of Receipt" (FIATA FCR).

6.2 The Letter of Credit shall provide for:

a) Shipment from any port or airport in Europe or North America.

b) Partial shipment and transhipment allowed.

6.3 The Letter of Credit shall be opened within 30 days of the Contract having been entered into at the latest and shall remain valid until 60 days after the agreed last date of delivery.

6.4 All expenses incurred in connection with the opening, handling and any prolongation of the Letter of Credit shall be borne by the Purchaser.

6.5 If the Purchaser fails to open the Letter of Credit within the period stated in Clause 6.3 of these Conditions, REFTECH A/S shall be entitled to terminate the Contract by notice in writing to the Purchaser and to claim compensation for all losses incurred.

6.6 REFTECH A/S shall be entitled to charge interest on overdue payments from the agreed date of payment at a rate of 5 per cent above the highest official bank rate in Denmark at due date.

6.7 If the Purchaser fails to pay amounts due within a period of three months for reasons other than those stated in Clause 16 (Grounds for Relief) of the present conditions, REFTECH A/S shall be entitled to terminate the Contract by notice in writing to the Purchaser and to claim compensation for any losses sustained.

7 TESTS AND/OR INSPECTIONS BEFORE SHIPMENT

7.1 If tests and/or inspections before shipment are provided for in the Contract, such tests and/or inspections shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours.

7.2 Unless otherwise agreed, the tests and/or inspections shall be carried out in accordance with the normal procedures of REFTECH A/S or its suppliers.

7.3 REFTECH A/S shall notify the Purchaser of such tests and/or inspections in sufficient time to permit the Purchaser's representative to be present at the tests and/or inspections. If the Purchaser's representative is not present, the test/inspection report submitted by REFTECH A/S shall be accepted as accurate.

7.4 If the tests and/or inspections show the equipment and components not to be in compliance with the Contract, REFTECH A/S shall without delay remedy any deficiencies in order to ensure that the equipment and components comply with the Contract. Further tests and/or inspections shall then be carried out on the Purchaser's request, unless the deficiency was insignificant.

7.5 REFTECH A/S shall bear all costs for tests and/or inspections carried out at the place of manufacture. The Purchaser shall, however, bear all travelling and living expenses for his representative(s) in connection with such tests and/or inspections.

8 PACKING AND SHIPMENT

8.1 Unless otherwise agreed, the equipment and components shall be packed in accordance with REFTECH A/S practises, using such packing and other materials as are necessary to avoid damage to, or deterioration of the equipment and components until they have been delivered to their agreed destination under normal transport conditions.

9 SUBSTITUTION

9.1 REFTECH A/S reserves the right to substitute any part whatsoever of the specified equipment and components for another part of equal quality and function as the part originally specified.

10 DELIVERY – PASSING OF RISK

10.1 The risk of loss of or damage to the equipment and components shall pass to the Purchaser in accordance with any agreed trade terms, which shall be interpreted in accordance with the Incoterms in force at the date of formation of the Contract. If no trade terms have been agreed upon, the Incoterm "Ex Works" shall be deemed to apply.

10.2 If, in the case of delivery "Ex Works", REFTECH A/S, on the request of the Purchaser, undertakes to send the equipment and components to their destination, the risk shall pass no later than when the equipment and components are handed over to the first carrier.

10.3 Unless otherwise agreed in writing between the parties, partial shipments shall be permitted.

11 TIME OF DELIVERY – DELAY

11.1 In the absence of any other agreement to the contrary, the time of delivery shall be calculated as from the latest of the following dates:

a) The date of formation of the contract as defined in Clause 2 of the present Conditions.

b) The date of receipt of any agreed down payment.

c) The date of receipt of the agreed irrevocable Letter of Credit confirmed by a first-class bank acceptable to REFTECH A/S.

d) The date of receipt of information from the Purchaser to the effect that any necessary import licence has been granted.

e) The day of receipt of other information requested.

11.2 If REFTECH A/S finds that it will not be able to deliver the equipment and components at the agreed time of delivery or if delay on its part seems likely, REFTECH A/S shall forthwith notify the Purchaser thereof in writing, stating the reason for such delay and if possible the time when delivery may be expected.

11.3 If delay in delivery is attributable to any of the circumstances mentioned in Clause 16 of the present Conditions or by an act or omission on the part of the Purchaser, the time for delivery shall be extended by a period which is reasonable having regard to all the circumstances of the case. This provision shall apply regardless of whether the reason for the delay occurs before or after the agreed time of delivery. In the event of failure by REFTECH A/S to effect delivery of the equipment and components at the agreed time of delivery, the Purchaser shall not be entitled to claim damages, nor shall the Purchaser be entitled to terminate the Contract.

11.4 If the Purchaser finds that he will not be able to take delivery of the equipment and components at the agreed time or if delay on his part seems likely, the Purchaser shall forthwith notify REFTECH A/S thereof, stating the reason for such delay and, if possible, the time when he will be able to take delivery.

If the Purchaser fails to take delivery at the agreed time, he shall nevertheless pay any part of the purchase price which becomes due on delivery as if delivery had been effected. REFTECH A/S shall arrange for storage of the equipment and components at the risk and expense of the Purchaser. REFTECH A/S shall also, if the Purchaser so requires, insure the equipment and components at the Purchaser's expense.

11.5 Unless the Purchaser's failure to take delivery is attributable to any of the circumstances mentioned in Clause 15 of the present Conditions, REFTECH A/S may by notice in writing request that the Purchaser take delivery within a reasonable period.

If, for any reason for which REFTECH A/S is not responsible, the Purchaser fails to take delivery within such period, REFTECH A/S may by notice in writing terminate the Contract in respect of such part of the equipment and components as is ready for delivery but has not been delivered by reason of delay on the part of the Purchaser. In that event, REFTECH A/S shall be entitled to compensation for any loss suffered as a result thereof.

12 ACCEPTANCE TAKING OVER

12.1 The Purchaser shall be deemed to have accepted and taken over the equipment and components -
(a) as soon as the equipment and components have been delivered as agreed or
(b) if so agreed, as soon as any agreed performance tests on site (for the purpose of which the Purchaser shall provide REFTECH A/S with all the necessary conditions, heat loads, utilities, auxiliary materials, raw materials and other materials of adequate quality and in a sufficient quantity, without any cost to REFTECH A/S) have been successfully completed or, in case such performance tests have been agreed on and the Purchaser fails to provide the above-mentioned materials, 30 days after the date on which REFTECH A/S notified the Purchaser of the equipment and components being ready to undergo the performance tests.

13 RESERVATION OF TITLE

13.1 The equipment and components covered by the Contract shall remain the property of REFTECH A/S until paid for in full, to the extent that such retention of ownership is valid under the applicable law. Bills of Exchange or instruments of debts shall not be considered payment until honoured in full.

13.2 The Purchaser shall at the request of REFTECH A/S assist REFTECH A/S in taking any measures necessary to protect REFTECH A/S`s title in the equipment and components in the country concerned.

13.3 The retention of property shall not affect the passing of risk as provided for in Clause 10 of the present Conditions.

14 LIABILITY FOR DEFECTS

14.1 Pursuant to the provisions of Clauses 14.2-14.11 below, REFTECH A/S shall, by repair or replacement, remedy any defect in the equipment and components resulting from faulty design, materials or workmanship.

14.2 REFTECH A/S`s liability shall be limited to defects which appear within a period of 12 months as from date of the equipment and components having been taken over by the Purchaser as per Clause 12 of the present Conditions. However, under no circumstances shall the period exceed 18 months as from the date of passing of risk as per Clause 10 of the present Conditions. If the equipment and components are used more intensely than agreed or could have been foreseen at the time of formation of the Contract, this period shall be reduced proportionally.

14.3 When a defect in a part of the equipment and components has been remedied, REFTECH A/S shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original part. For the remaining parts of the equipment and components, the period mentioned in Clause 14.2 of the present Conditions shall be extended only by a period equal to the period during which the equipment and components are out of operation as a result of such defect.

14.4 On notification in writing by the Purchaser concerning any defects covered by Clause 14.1 of these Conditions, REFTECH A/S shall, without undue delay, remedy such defect. Remedy of the defect shall be effected at the Purchaser's place of business unless RFETECH A/S deems it appropriate that the defective part of the equipment and components be returned to REFTECH A/S for repair or replacement at its own workshop. In that case, the Purchaser shall follow REFTECH A/S`s instructions as to the method of transport.
REFTECH A/S shall be obliged to carry out dismantling and reinstallation of the defective part only if this, in the opinion of REFTECH A/S, requires special knowledge. If such special knowledge is not required, REFTECH A/S has fulfilled its obligations in respect of the defect when delivering to the Purchaser a duly repaired or replaced part.
If REFTECH A/S so requires, the Purchaser shall give all necessary assistance with the customs formalities required for the export and re-import of the repaired or replaced part.

14.5 If the Purchaser has given such notice as is mentioned in Clause 14.4 of the present Conditions, and no defect is found for which REFTECH A/S can be held liable, REFTECH A/S shall be entitled to compensation for the work carried out and costs incurred by reason of such notice.

14.6 If, for the purpose of dismantling or re-installation of parts, an intervention in other equipment than the equipment and components delivered is required, the labour and costs incurred thereby shall be borne by the Purchaser.

14.7 Defective parts, which have been replaced, shall be placed at the disposal of REFTECH A/S and shall be its property. The Purchaser shall, at the cost of REFTECH A/S, be responsible for the return of such parts. If the parts are not returned within 30 days, REFTECH A/S shall be entitled to compensation for such parts.

14.8 REFTECH A/S shall not be liable for defects occurring in materials provided by, or attributable to a design stipulated or specified by the Purchaser.

14.9 REFTECH A/S shall be liable only for defects, which appear under the conditions of operation provided for in the Contract and occur in the course of proper use of the equipment and components. REFTECH A/S`s liability shall not cover defects caused by occurrences after the risk in the equipment and components has passed to the Purchaser. The liability shall not e.g. cover defects attributable to faulty maintenance on the part of the Purchaser or incorrect installation carried out by the Purchaser, alterations undertaken without REFTECH A/S`s consent in writing or by faulty repairs by the Purchaser. Finally, REFTECH A/S`s liability shall not cover normal wear and tear or deterioration. **Be it noted** that REFTECH A/S`s liability shall not cover parts or components that are subject to normal wear or consumption or routine change parts.

14.10 Notwithstanding the provisions of Clauses 14.1-14.9 of the present Conditions, REFTECH A/S shall accept no liability for defects in any part of the equipment and components for a period exceeding two years as calculated from the start of the liability period defined in Clause 14.2 of the present Conditions.

14.11 Save as stipulated in Clauses 14.1-14.9 of the present Conditions, REFTECH A/S shall accept no liability for defects. This applies to any loss resulting from such defect, including but not limited to loss of production, loss of profit, loss of use, loss of contracts or any other consequential, financial or indirect loss. This limitation of REFTECH A/S`s liability shall not apply if REFTECH A/S is guilty of gross misconduct.

15 LIABILITY FOR DAMAGE TO PROPERTY CAUSED BY THE EQUIPMENT AND COMPONENTS

15.1 The Purchaser shall indemnify and hold REFTECH A/S harmless to the extent that REFTECH A/S is held liable in damages to any third party by reason of any damage for which REFTECH A/S is not liable to the Purchaser under Clauses 15.2 and 15.3 below.

15.2 REFTECH A/S shall not be liable for loss or damage caused by the equipment and components:

a) to any (movable or immovable) property where the damage occurs while the equipment and components are in the Purchaser's possession, or

b) to products manufactured by the Purchaser or to products in which the Purchaser's products are incorporated or for loss or damage to any property, where such damage is caused by such products because of properties in the equipment and components.

15.3 REFTECH A/S shall under no circumstances be liable for loss of production, loss of profit, loss of use, loss of contracts or any other consequential, financial or indirect loss whatsoever.

15.4 The above limitations to REFTECH A/S`s liability shall not apply in the event that REFTECH A/S is guilty of gross negligence.

15.5 If a claim for loss or damage as described in this Clause is set up by a third party against either party to the Contract, such party shall forthwith notify the other party thereof in writing. REFTECH A/S and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitration tribunal examining claims against either party, where the claim is based on damage alleged to have been caused by the equipment and components. The division of liability between REFTECH A/S and the Purchaser shall, however, always be settled by arbitration in accordance with Clause 19 of the present Conditions.

16 GROUNDS FOR RELIEF (FORCE MAJEURE)

16.1 The following circumstances shall be considered grounds for relief to the extent that such circumstances impede the performance of the Contract or makes performance unreasonably onerous: industrial disputes and any other circumstances beyond the control of the parties such as fire, war, mobilisation or military call-up of a comparable scope, requisition, seizure, currency restrictions, insurrection and civil commotion, shortage of transport, general shortage of materials, restrictions in the use of power, import and export prohibitions, embargoes, defects or delays in deliveries by sub-contractors attributable to any such circumstances referred to in this Clause.

16.2 The circumstances listed above shall constitute grounds for relief only to the extent that the effect thereof on the performance of the Contract could not have been foreseen at the time of formation of the contract.

16.3 The party wishing to claim relief shall notify the other party in writing without delay on the intervention and on the cessation of any such circumstance.
If grounds for relief prevent the Purchaser from fulfilling his obligations, he shall compensate REFTECH A/S for any expenses incurred by REFTECH A/S for the purpose of securing and protecting the equipment and components.

16.4 Notwithstanding other provisions of the present General Conditions, either party shall be entitled to terminate the Contract by notice in writing to the other party if performance of the Contract is delayed for more than six months by reason of any grounds for relief described in Clause 16.1 of the present Conditions.

17 TECHNICAL ASSISTANCE, SUPERVISION OF ERECTION AND COMMISSIONING

17.1 If and to the extent it has been agreed by REFTECH A/S to provide Technical Assistance and/or to carry out Supervision of erection and/or Commissioning in connection with the deliveries made, REFTECH A/S`s General Conditions governing Technical Assistance, Supervision of Erection and Commissioning shall apply.

18 LIMITATIONS OF DAMAGES

18.1 Save as stated elsewhere in the present Conditions, neither party shall be liable to the other party for loss of production, loss of profit, loss of use, loss of contracts or for any consequential, financial or indirect loss whatsoever.

19 DISPUTES AND APPLICABLE LAW

19.1 All disputes arising out of the Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules, supplemented as necessary by the procedural rules of the Danish Law.

19.2 The Contract shall be governed by the substantive law of Denmark.