

## **NISSENS COOLING SOLUTIONS**

GENERAL CONDITIONS FOR THE SUPPLY OF PRODUCTS AND SERVICES  
(hereinafter referred to as the "General Conditions")

### **I APPLICABILITY**

1. These General Conditions shall apply to all supplies of products and services (hereinafter referred to as the "Product" by Nissens Cooling Solutions A/S (Denmark), Nissens Cooling Solutions Inc. (US) og Nissens Cooling System (China) each hereinafter referred to as "Nissens Cooling Solutions"), unless otherwise agreed in writing.

2. These General Conditions shall apply together with any sales and/or supply contract between Nissens Cooling Solutions and Purchaser (hereinafter referred to as the "Contract").

In case of any discrepancy or inconsistency between the Contract and these General Conditions, the Contract shall prevail.

### **II PRODUCT INFORMATION**

3. Only information and data included in the Contract and/or the General Conditions are binding on Nissens Cooling Solutions. All information and data contained in product brochures, price lists or any other documents are binding only to the extent that they are by reference expressly incorporated into the Contract.

### **III DRAWINGS AND DESCRIPTIONS**

4. All drawings and technical descriptions related to the Product and submitted by Nissens Cooling Solutions shall remain the property of Nissens Cooling Solutions. Such drawings or technical descriptions shall only be used for the purpose for which they are provided and may not be copied or communicated to any third party without Nissens Cooling Solutions' written consent.

### **IV DELIVERY**

5. Any trade term agreed in the Contract shall be construed in accordance with INCOTERMS 2010.

Unless otherwise agreed in writing, all deliveries by Nissens Cooling Solutions shall be Ex Works (INCOTERMS 2010).

Delivery by instalments by Nissens Cooling Solutions shall be permitted unless otherwise agreed in writing in the Contract.

### **V RULES AND REQUIREMENTS**

6. Any rules and/or requirements in respect of the Product laid down by any public authority shall be expressly referred to in the Contract in order to be binding in the relationship between Nissens Cooling Solutions and Purchaser.

Purchaser bears the risk of any amendments to such rules and/or requirements after the conclusion of the Contract. In the event that such rules and/or requirements are amended after the conclusion of the Contract, Nissens Cooling Solutions will at the request of Purchaser, but subject to price adjustments, undertake reasonable endeavors to change the Product accordingly, but nothing herein shall be construed as an obligation on Nissens Cooling Solutions to make such change.

### **VI TIME OF DELIVERY, DELAY**

7. Delivery will be made no later than the date agreed in the Contract. If no time of delivery is agreed, delivery will be made on a date deemed reasonable by Nissens Cooling Solutions.

8. In the event that delivery from Nissens Cooling Solutions is delayed and Nissens Cooling Solutions receives notice hereof from Purchaser or in the event that Nissens Cooling Solutions anticipates that it will

be unable to deliver the Product on the agreed date of delivery, Nissens Cooling Solutions shall forthwith notify Purchaser stating the reason for the delay and fix an additional period of time of reasonable length during which delivery will be made. If Nissens Cooling Solutions does not deliver within this additional period of time, Purchaser is entitled to avoid the Contract in whole or in part.

9. The avoidance of the Contract by Purchaser shall be the sole and exclusive remedies available to Purchaser in case of delay on the part of Nissens Cooling Solutions. Any other remedy against Nissens Cooling Solutions based on such delay is excluded.

10. If Purchaser anticipates that he will not take delivery of the Product at the agreed time of delivery, he shall forthwith notify Nissens Cooling Solutions thereof stating the reason and the time when he will be able to take delivery.

11. Nissens Cooling Solutions may in connection with refusal by Purchaser to take delivery fix a final period of time of reasonable length for Purchaser to take delivery. If Purchaser fails to take delivery within such period, Nissens Cooling Solutions may avoid the Contract in whole or in part. In addition Nissens Cooling Solutions shall in any case be entitled to liquidated damages equal to 15 per cent of the purchase price. In the event that Nissens Cooling Solutions incurs a loss in excess of 15 per cent of the purchase price, Purchaser shall indemnify Nissens Cooling Solutions for any such loss.

12. If Purchaser fails to take delivery at the agreed time of delivery, he shall pay such part of the purchase price as becomes due on delivery as if delivery had taken place. Nissens Cooling Solutions shall arrange for storage of the Product at the risk and expense of Purchaser.

### **VII PAYMENT**

13. Unless otherwise agreed, the purchase price shall be paid on the date of delivery.

14. Notwithstanding the means of payment, payment shall not be deemed to have been effected until the full outstanding amount has been irrevocably credited to Nissens Cooling Solutions' account.

15. If Purchaser fails to pay on the agreed date, Nissens Cooling Solutions shall be entitled to interest from the day on which payment was due. The rate of interest shall be CIBOR (the Copenhagen Interbank Offered Rate) + 7 per cent per annum.

In any case of late payment by Purchaser, Nissens Cooling Solutions may at its discretion suspend performance of any of its obligations under the Contract until full and effective payment has been effected. Nissens Cooling Solutions shall forthwith give notice of the suspension to Purchaser.

16. Any delay in payment by Purchaser shall be deemed a fundamental breach entitling Nissens Cooling Solutions to avoid the Contract and to claim damages for the loss incurred.

### **VIII RETENTION OF TITLE**

17. All Products shall remain the property of Nissens Cooling Solutions until full and effective payment has been effected. The retention of title shall not affect the passing of risk.

### **IX WARRANTY**

18. Pursuant to Clauses 19 to 25 below, Nissens Cooling Solutions will remedy any defect or non-conformity resulting from faulty design, materials or workmanship (hereinafter referred to as the "Defect").

19. Purchaser shall give notice to Nissens Cooling Solutions of any Defect immediately after he discovers or ought to have discovered the Defect. The notice shall specify the nature of the Defect and the ID number or Barcode number on the packaging. In case that these numbers are not available, a Nissens Cooling Solutions invoice must be used as documentation that the product was purchased from Nissens Cooling Solutions.

20. In any case, Purchaser shall give Nissens Cooling Solutions notice of any Defect within 12 months from the date when Purchaser's product, in which the Product is installed, is put into operation and always within 18 months from the date of delivery of the Product by Nissens Cooling Solutions. If timely notice is not given, Purchaser loses the right to rely on any Defect.

21. Nissens Cooling Solutions may at its discretion choose either to deliver a substitute Product or to repair any defective Product. Any repair or delivery of a substitute Product will be made at the original agreed place of delivery of the Product.

If Nissens Cooling Solutions has not delivered a substitute Product or repaired a defective Product within a reasonable time of having received notice of the Defect, Purchaser shall by notice to Nissens Cooling Solutions fix an additional period of time of reasonable length for Nissens Cooling Solutions to deliver a substitute Product or repair the Product. If Nissens Cooling Solutions fails to deliver a substitute Product or repair the Product within the additional period of time fixed by Purchaser, Purchaser shall be entitled to either:

a) a proportionate price reduction up to 10 per cent of the purchase price; or  
b) avoid the contract provided that the Defect constitutes a fundamental breach by Nissens Cooling Solutions.

22. A defective Product, or parts thereof, having been replaced by Nissens Cooling Solutions shall be made available to Nissens Cooling Solutions and shall be its sole property.

23. Nissens Cooling Solutions is not liable for any damage arising out of any use of the Product not in accordance with the conditions of operation provided for in the Contract or any other improper use of the Product.

24. Nissens Cooling Solutions excludes liability for any damage caused by lack of or faulty maintenance, incorrect installation or faulty repair by Purchaser or by any alteration carried out without Nissens Cooling Solutions' written consent. Nissens Cooling Solutions is not liable for normal wear and tear or deterioration.

25. THE REMEDIES PROVIDED FOR IN CLAUSES 19 TO 24 SHALL BE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN OR ORAL. EXCEPTED ARE SUCH WARRANTIES IMPLIED FROM THE SPECIFICATIONS AGREED UPON AND WARRANTIES REQUIRED BY MANDATORY APPLICABLE LAWS.

### **X PRODUCT LIABILITY**

26. Nissens Cooling Solutions' liability for death or injury to persons or for damage to real or personal property caused by defects in the Product shall be limited to the liability prescribed by the mandatory rules of EU product liability legislation.

27. Nissens Cooling Solutions shall not be liable for any damage to real or personal property caused by the Product after it has been delivered and whilst it is in the possession of Purchaser. Nissens Cooling Solutions shall not be liable for any damage to products manufactured by Purchaser

or to products of which Purchaser's products form a part. Nissens Cooling Solutions shall not incur any product liability on the basis of Danish case law or jurisprudence.

28. If Nissens Cooling Solutions incurs liability towards any third party for any damage as described in the preceding Clauses, Purchaser shall indemnify, defend and hold Nissens Cooling Solutions harmless.

29. If a claim in connection with such damage and/or injury as described in the three preceding Clauses is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing.

Nissens Cooling Solutions and Purchaser shall be mutually obliged to let themselves be summoned to a court or arbitral tribunal, examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Product, always provided that such claims are based on the liability prescribed by the mandatory rules of EU product liability legislation.

### **XI FORCE MAJEURE**

30. Either party shall be entitled to suspend performance of its obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: fire, war (whether declared or not), military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power, any industrial dispute and any defects or delays in deliveries by sub-contractors caused by any such circumstances referred to in this Clause and any other circumstances that are beyond the parties' control and which affect the parties' possibilities to fulfil the Contract (hereinafter "Force Majeure").

Any circumstance referred to in this Clause whether occurring prior to or after the conclusion of the Contract shall give a right to suspension only if its effect on the performance of the Contract could not be foreseen at the time of the conclusion of the Contract.

31. A party claiming to be affected by Force Majeure shall forthwith notify the other party in writing on the intervention and on the cessation of any such circumstance. If Force Majeure prevents Purchaser from fulfilling his obligations, he shall indemnify Nissens Cooling Solutions for any expenses incurred in securing and protecting the Product and other expenses due to the suspension of the contractual obligations.

32. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to avoid the Contract by notice in writing to the other party if performance of the Contract has been suspended under Clause 30 for more than six months.

### **XII ANTICIPATED NON-PERFORMANCE**

33. Notwithstanding other provisions in these conditions regarding suspension, each party shall be entitled to suspend the performance of its obligations under the Contract, where it is clear from the circumstances that the other party will not perform its obligations. A party suspending its performance of the Contract shall forthwith notify the other party thereof in writing.

### **XIII CONFIDENTIALITY**

34. Either party shall keep confidential any information received from the other party and pertaining to the Product or the Contract, always provided that the information received is not within the public domain.

### **XIV CONSEQUENTIAL LOSSES ETC.**

35. There shall be no liability for either party towards the other party for any punitive, indirect, special, exemplary or consequential damage including, but not limited to, any consequential losses arising out of loss of production, loss of profit, loss of use, loss of earnings, loss of goodwill or loss of contracts.

### **XV APPLICABLE LAW AND DISPUTES**

36. These Conditions, and any contractual relationship between Nissens Cooling Solutions and Purchaser in connection herewith, shall be governed by the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) and with regard to issues not governed by CISG by the substantive laws of Denmark.

Any dispute or claim arising out of or in connection with these General Conditions and any contractual relationship between Nissens Cooling Solutions and Purchaser in connection herewith shall be settled in accordance with the Rules of Procedure of the Danish Institute of Arbitration (Copenhagen Arbitration) by a sole arbitrator appointed by the Institute in accordance with the said rules.

The decision of the arbitrator shall be final and binding upon the parties. The place of arbitration shall be Copenhagen. The language of the arbitration shall be the English language.

Notwithstanding the foregoing, Nissens Cooling Solutions A/S, Nissens Cooling Solutions Inc. or Nissens Cooling System Ltd. may at its discretion as the alternative require any such dispute to be settled before either the local courts of the country of the Nissens Cooling Solutions domicile or of a country in which Purchaser maintains a place of business.