

TERMS AND CONDITIONS OF SALE

- DEFINITIONS**

In these Conditions of Sale:

"Business Day" means a day not being Saturday, Sunday or public holiday on which banks in Selangor are open for business.

"Buyer" means the person, firm or company who buys or agrees to buy the Goods from Danfoss and shall include personal representatives or successors and assigns of the Buyer.

"Danfoss" means Danfoss Industries Sdn Bhd (Company No. 335074-V) and shall include its successors and assigns.

"Contract" means the agreement between the Buyer and Danfoss and shall include the Order Confirmation, these Conditions, any other documents (or parts thereof) incorporated by reference in the Order Confirmation and any other documents, terms and conditions relating to the supply, erection and installation of Goods mutually agreed in writing between the Buyer and Danfoss subsequent to the Order Confirmation.

"Goods" means goods which the Buyer agrees to buy from Danfoss.

"Order Confirmation" means the Order Confirmation of Danfoss or such other similar document of Danfoss confirming acceptance by Danfoss of the Buyer's order of Goods or Services.

"Services" means the services to be performed by Danfoss, as agreed between Danfoss and Buyer.
- CONDITIONS APPLICABLE**

These Conditions shall apply to all contracts for the sale of Goods or Services provided by Danfoss to the Buyer and shall not be excluded or varied by any other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order or other similar form or document even if no specific objections are raised by Danfoss.
- ORDER CONFIRMATION**
 - Danfoss shall not be deemed to have accepted an order until an Order Confirmation is issued and dispatched by Danfoss to the Buyer.
 - The placement of an order by the Buyer for the Goods or Services pursuant to an Order Confirmation shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
 - Acceptance by Danfoss of any orders made by the Buyer pursuant to any quotations, proforma invoices and similar documents shall also be subject to the issue of an Order Confirmation by Danfoss.
- ADDITIONAL CONDITIONS OF SALE**

Danfoss may impose additional special conditions in the Contract and these additional special conditions shall apply to that Contract in addition to these Conditions of Sale provided that such additional special conditions shall have been notified to the Buyer in writing. In the event of inconsistency, the additional special conditions shall prevail. Danfoss shall not be obliged to proceed with any supply of Goods or Services until Danfoss has received from the Buyer written confirmation that it accepts the additional special conditions.
- CATALOGUES AND OTHER INFORMATION**
 - Danfoss takes no responsibility for errors in or wrong interpretation of information and technical data contained in catalogues, brochures, specifications, drawings and other printed material.
 - The Buyer shall be solely responsible for satisfying itself that the Goods are suitable for the particular purpose for which they are required. Danfoss gives no warranty that the Goods will be suitable or fit for the specific purpose for which they are required and all implied conditions and warranties to this effect are excluded to the extent permitted by law.
 - Any typographical or clerical error or omission in any catalogues, brochures, sales literature, quotation, price list, acceptance of order, invoice or other document or information issued by Danfoss shall be subject to correction or amendment without any liability on the part of Danfoss.
- ALTERATIONS**

Notwithstanding anything to the contrary contained in these Conditions, or mutually agreed in writing between Danfoss and the Buyer, Danfoss reserves the right to make alterations to its products without notice including Goods placed on order provided that such changes does not, in the sole opinion of Danfoss, materially alter the technical specifications of the Goods.
- PRICE**

Unless otherwise expressly provided in the Contract:

 - PRICES QUOTED:** All prices quoted by Danfoss to the buyer are in United States Dollars. All prices quoted are prices for the Goods, and exclude cost of insurance, carriage, packing and other ancillary costs, goods and services tax and all other taxes and duties. Where Danfoss agrees to arrange for packing and carriage in accordance with the Buyer's instructions, the same will be at the risk and expense of the Buyer.
 - ERRORS:** Danfoss reserves the right to correct all typographical or clerical errors or omissions in its prices or specifications.
 - PRICE ADJUSTMENTS:** Danfoss reserves the right, to give notice to the Buyer at any time before delivery, to adjust accepted prices for the Goods in the event of interference of Government or other conditions or factors beyond the control of Danfoss. The Buyer shall not be released from the Contract by any such adjustment in prices.
 - PARTIAL DELIVERIES:** All prices quoted are based on deliveries as defined in the Contract. Danfoss and the Buyer agree that Danfoss may make partial deliveries of Goods unless otherwise agreed upon in writing by Danfoss.
- PAYMENT**
 - Subject to any such terms, payment of all sums payable under the Contract shall be made in full when Goods are physically delivered or deemed to have been delivered to the Buyer, whichever is earlier. In the case of Contract for Services, payment of all sums under the Contract shall be made in full when the Services are rendered or upon substantial completion of such Services. Any further sums due to Danfoss over and above the sums specified in the Order Confirmation of Danfoss, however arising, shall likewise be paid at the time when the Goods are physically delivered or deemed to have been delivered to the Buyer (whichever is earlier) or services rendered, or if arising after that time, be payable on demand.
 - Payment shall not be withheld or deferred notwithstanding any failure or neglect by the Buyer to give instructions for the packing or collection of the Goods for any reason **whatsoever within three (3) Business Days of being notified by Danfoss to do so**, or if there be minor defects in the Goods which do not substantially affect their commercial use.
 - Where Goods/Services are to be delivered/rendered in installments or by way of partial deliveries, payment of each installment shall be immediately due upon such physical delivery of the Goods or deemed delivery of the Goods (whichever is earlier) or completion of Services. It shall be a condition precedent to future deliveries that all payments due and outstanding to Danfoss have been paid. Danfoss shall not be obliged to render any further Services or deliver any further Goods if any payment is due or outstanding from the Buyer.
 - In all cases, time of payment shall be of the essence of the Contract.
 - Should it be necessary for any reason to dispatch any item comprised in the Goods separately the sum payable in respect of such item will be payable by the Buyer when such item is ready for packing or delivery notwithstanding that any other items comprised in the Goods shall not be ready for packing or delivery.
 - Without prejudice to other rights to Danfoss, late payment interest at the rate of 5% per annum above the prime lending rate of Citibank KL prevailing from time to time shall be payable by the Buyer, computed from the date at which such sum becomes payable until the date of actual payment.
 - If the Buyer fails to make any payment within 30 days of the due date for that payment in accordance with sub-Clauses (i) and (ii) or any other provision of the Contract, then all sums payable to Danfoss under the Contract and any other contract between the Buyer and Danfoss shall become immediately due for payment without regard to the time of payment of any outstanding bill of exchange or other deferred terms for that other contract.
 - Danfoss may suspend or withhold the performance of all or any of its obligations under the Contract whilst any amount due from the Buyer to Danfoss remains unpaid for any reason whatsoever.
 - The Buyer shall not be entitled to withhold or set off any payment to Danfoss for any reason whatsoever.
- ACCEPTANCE OF GOODS**

The Buyer shall be deemed to have accepted the Goods or any of them immediately upon the same being delivered to the Buyer or that of any person, firm or company authorized by the Buyer to take such delivery where after the Buyer shall not be entitled to reject the same.
- WARRANTY**
 - Subject to Clauses 14, 17 and 18 and the conditions set out below, Danfoss agrees to repair or to replace at the discretion of Danfoss such Goods that are found to be defective upon examination by Danfoss provided that Danfoss is of the opinion that the defect is due to faulty manufacture, design or defective material and provided that the defective Goods are returned to Danfoss with insurance and freight paid within 12 months of delivery or the date of invoice, whichever is earlier.

And provided further that:-

 - Cost free repairs are only offered if the terms of payment herein are observed;
 - Danfoss shall be under no liability under this warranty if the Goods are repaired or altered without the consent of Danfoss or are applied for purposes for which they are not designed or installed or applied contrary to the instructions given by Danfoss;
 - cost free repairs do not extend to parts, materials or equipment not manufactured by Danfoss, in which event the Buyer shall only be entitled to the benefit of any warranty or guarantee given by the manufacturer of such parts, materials or equipment, if any.
 - Goods returned shall be free of extraneous equipment; and
 - the liability of Danfoss under this Clause and the Contract shall be limited to the cost of repairing or cost of replacing the defective Goods or part, at the sole discretion of Danfoss, or in the case of Contract for Services, the cost of repairing the defective workmanship.
 - The Buyer shall be responsible and pay for all freight and insurance charges for collection of Defective Goods which have been repaired and shall make its own arrangements for collecting such Goods during the normal working hours of Danfoss after giving Danfoss at least seven (7) Business Days prior notice. The provisions of Clauses 11 (ii) and (iv) shall apply to any Goods repaired by Danfoss.
 - In the event that Danfoss is not able to repair any Defective Goods, Danfoss shall, at its sole option, have the option to replace the Defective Good with similar Goods.
- DELIVERY/STORAGE**
 - Danfoss shall not be liable for any delay due to causes beyond the control of Danfoss not restricted to natural disasters, strikes, lock-outs, labour disturbances, or in consequence of extraordinary measures on the part of government, hindrances to transportation, delayed, incomplete or defective delivery of materials ordered in due time from sub-suppliers, failure of supply of electricity or raw materials and similar obstacles to production, fire or workshop accidents at Danfoss' own or at sub-suppliers' factories.
 - Danfoss shall be deemed to have made due delivery of the Goods to the Buyer upon:
 - the handing of Goods to the Buyer or Buyer's agent or representative at such place agreed between the parties; or
 - the notification by Danfoss that the Goods are ready for packing or collection at Danfoss' premises or such other premises or factories (whether in Malaysia or overseas). The Buyer shall, at the Buyer's own expense, arrange for transport, packing and insurance of the Goods.
 - Danfoss will endeavour to deliver the Goods to or render the Services (as the case may be) within a reasonable time. Any dates quoted for delivery of the Goods are approximate only and Danfoss shall not be liable for any delay of the Goods howsoever caused.
 - These Conditions form the entire contract between Danfoss and the Buyer. Representations and agreements not expressly contained in any contract or incorporated by reference therein shall not be binding upon Danfoss.
 - Where Goods/Services are to be delivered/rendered in installments, each installment shall constitute a separate contract and failure by Danfoss to deliver or complete any one or more of the installments in accordance with these Conditions shall not entitle the Buyer to treat the whole contract or any other part of the Contract as discharged and/or claim in respect of the whole Contract.
 - If the Buyer fails to pack or take delivery of the Goods or fails to arrange for the Goods to be stored elsewhere at the time stated for delivery, then Danfoss shall be entitled to, without prejudice to any other right or remedy available to Danfoss:-
 - arrange for the Goods to be stored at the Buyer's risk and the Buyer shall indemnify Danfoss against all costs, insurance and expenses arising out of such storage. Charges for such storage shall be paid at such rate(s) specified by Danfoss and in the manner provided in Clause 8 (prior to collection of the Goods); or
 - sell the Goods at the best price readily obtainable by Danfoss and (after deducting all storage and selling expenses) account to the Buyer for excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- PASSING OF PROPERTY**

Notwithstanding the provisions of Clause 14 hereof, until Danfoss has been paid in full for the Goods:

 - Property in the Goods shall remain in Danfoss and the Goods shall be received and held by the Buyer as agent of and bailee for Danfoss and the Buyer shall store the Goods without charge to Danfoss in such manner that they are clearly identified as the property of Danfoss.
 - Danfoss may recover all or any of the Goods from the Buyer without notice at any time they are in the possession of the Buyer and for that purpose the Buyer hereby grants an irrevocable license to Danfoss and its servants and agents to enter upon any land or building upon which the Goods are situated.
 - If the Buyer incorporates any of the Goods into other products, the property in those other products shall, upon such incorporation, ipso facto be transferred to Danfoss, and the Buyer shall be a bailee of them. The Buyer shall store the same for Danfoss without charge to Danfoss in such manner that they are clearly identified as the property of Danfoss.
 - Without prejudice to the foregoing provisions of this Clause the Buyer, may, with the prior written consent of Danfoss to dispose of the Goods or such other products referred to in sub-Clause 12(ii) herein but only for the account of and as agent for Danfoss and in the event of such disposal, the Buyer shall be a trustee of Danfoss for any amounts due to Danfoss and shall account to Danfoss for the proceeds of the sale, but may retain therefrom any excess of such proceeds over the total amount outstanding under the contract and any other contract between the parties hereto.
 - The Buyer shall without charge to Danfoss ensure that the Goods and any products in which they are incorporated are kept in good condition and repair and shall keep such goods and products insured against all risks to their full replacement cost under a policy which provides for all monies payable thereunder to be paid to Danfoss for the purpose of satisfying from such monies any outstanding claims by Danfoss against the Buyer and paying the balance (if any) to the Buyer. The Buyer shall not remove any marks identifying the Goods as the property of Danfoss.
 - The Buyer shall not, without the prior written consent of Danfoss, affix the Goods to any land or building that does not belong to the Buyer if any payment for the Goods remains due and outstanding from the Buyer.
- RIGHT OF REPOSSSESSION AND RESALE OF DANFOSS**

Without prejudice to any other rights or remedies available to Danfoss under the Contract at law, in equity or by Statute, Danfoss shall be entitled to seize, repossess or resell the Goods or any part thereof without notice to the Buyer and for such purpose, Danfoss is hereby deemed to have granted an irrevocable license to Danfoss, its servants and agents to enter any premises in or upon which Danfoss reasonably believe from time to time the Goods to be located upon the occurrence of any of the following events:-

 - if an order is made or an resolution resolution is passed for the winding up of the Buyer or a meeting is summoned or convened for the purpose of considering such a resolution (otherwise than for the purpose of amalgamation or reconstitution) prior to full payment of all monies payable under the Contract; or
 - if any person appoints a receiver and manager over the whole or any part of the undertaking or assets of the Buyer prior to full payment of all monies payable under the Contract; or
 - if the Buyer enters any arrangement or composition with any of its creditors prior to full payment of all monies payable under the Contract; or
 - if the Buyer is placed under judicial management or a meeting is summoned or other steps taken for the purpose of placing the Buyer under judicial management and appointing an judicial manager therefor prior to full payment of all monies payable under the Contract; or
 - if the Buyer is unable to pay its debts as they fall due or otherwise commits any act of insolvency; or
 - if the Buyer fails to pay for the Goods in accordance with the terms of this Contract; or
 - if the Buyer fails to comply with any of its obligations under this Contract;

In addition, Danfoss shall be entitled to recover any loss occasioned thereby.
- RISK**
 - The Buyer shall bear the risk in the Goods immediately when the Goods are ready for delivery irrespective of whether property in the Goods has passed to the Buyer. Danfoss has notified the Buyer that such Goods are ready for delivery or of any duties which Danfoss may undertake with regard to packing, delivery, erection, installation or assembly.
 - For the avoidance of doubt, Danfoss shall not be liable for loss or damage to the Goods in transit or after risk has passed to the Buyer, whichever is earlier.
- DEFAULT OF BUYER**

If the Buyer makes default in or commits any breach of its obligations to Danfoss, then Danfoss shall immediately become entitled (without prejudice to any other rights or claims which it may have) (at its option) to suspend further performance of or to terminate the Contract.
- INSURANCE**

The responsibility for insuring the Goods after the risk in them has passed to the Buyer shall be that of the Buyer. Danfoss, will at the cost of and on behalf of the Buyer, effect marine or such other insurance as may be instructed.
- LIMITATION OF LIABILITY**
 - Subject to the rights conferred upon the Buyer and restrictions so imposed on Danfoss by any law or statute, the total liability of Danfoss whether in contract tort or otherwise and whether in respect of one claim or in the aggregate shall be limited to the amount of the purchase price of the Goods payable under the Contract/contract value of Services.
 - All conditions warranties and representations on the part of Danfoss where express or implied statutory or otherwise whether collateral or antecedent hereto or otherwise are expressly excluded.
 - Danfoss shall not be liable in any event at any time for any indirect or consequential loss or damage (including damages to person or property, consequential loss, loss of product, loss of profit, loss of goods in store or the like which might arise out of defects and/or delay in delivery of the Goods) howsoever caused which may be suffered by the Buyer or any other person firm or company due to any act, right or omission of Danfoss, its servants or agents.
 - Without prejudice to the foregoing provisions of this Clause, the Buyer shall in particular keep Danfoss indemnified against any liability Danfoss may incur at any time whether in tort or otherwise to any servant or agent of the Buyer in respect of any defect or failure of the Goods or any part thereof or replacement thereof howsoever caused.
 - Each of the preceding sub-clauses of this Clause shall be deemed to be separate and severable and enforceable accordingly.
- GOODS NOT MANUFACTURED BY DANFOSS**
 - When the Goods are the subject of a manufacturer's specifications, Danfoss will be deemed to have performed its obligations to the Buyer if it delivers to the Buyer Goods according to the specifications as known to Danfoss at the time of the order or according to such other altered or amended specifications for those Goods whether or not those specifications are known to Danfoss and no variation in these terms and conditions occasioned by such operation or amendment of the specification shall entitle the Buyer to avoid the Contract or to any adjustment of the purchase price.
 - Where Goods are not manufactured by Danfoss, then Danfoss shall be entitled to the benefit of any restriction or exclusion of liability as between the manufacturer and the Buyer if they are less favourable to the Buyer than under these Conditions.
 - Without prejudice to the generality of the remainder of the Contract, Danfoss shall not be responsible for ensuring that any combination of equipment or articles included in the Goods of which all or part has been selected or nominated by the Buyer and not manufactured by Danfoss is in any way satisfactory or fit for the purpose for which it is intended and the onus of ensuring this shall be on the Buyer.
- SAFETY AND TECHNICAL INSTRUCTIONS**

The Buyer undertakes to ensure that it and all its servants and agents will observe all safety and technical instructions in operating manuals, bulletins and other directions of Danfoss or manufacturer and shall indemnify Danfoss in respect of any claims, damage or injury arising wholly or partially from any failure to observe such safety and technical instruments.
- INCOTERMS**

The international rules for the interpretation of trade terms "Incoterms" shall apply to the commercial terms used in the Contract unless they are inconsistent with any provisions in the Contract.
- GOVERNING LAW AND JURISDICTION**

The validity extent and performance of the Contract and any variation thereof, or any agreement entered into by the parties hereto ancillary to the Contract shall be governed by the laws of Malaysia. Insofar as the Buyer is not already subject to the jurisdiction of the courts of Malaysia, it shall, subject to Clause 22, be deemed to submit itself to the non-exclusive jurisdiction of the courts of Malaysia any dispute or proceedings relating to the validity extent or performance of the Contract and any variation thereof, or any agreement entered into by the parties hereto ancillary to the Contract, including any claim for damages for breach thereof. Subject to the provisions of Clause 22 no action or proceeding in relation to the Contract or arising therefrom shall be initiated against Danfoss except in the courts of Malaysia.
- ARBITRATION**

In the event of any dispute arising out of the Contract the Buyer and Danfoss undertake to make every effort to reach an amicable settlement. Failing such settlement within 21 days from receipt by Danfoss of a notice of the dispute, the dispute shall be referred to and finally resolved by arbitration in Malaysia in accordance with the rules for arbitration of the Kuala Lumpur Regional Arbitration Centre for the time being in force which rules are deemed to be incorporated by reference to this clause. The arbitration tribunal shall consist of one (1) arbitrator to be mutually agreed between the parties to the dispute or in default of agreement within 28 days after the period of 21 days above, to be appointed by the Chairman of the Kuala Lumpur Regional Arbitration Centre.
- NOTICES**

Where these terms and conditions provide that a notice from either party to the other is required, such notice must be served in writing and conveyed by the fastest reasonable means, having regard to the content thereof, provided that where there is in these Conditions, a specified period within which such a notice is to be given to ensure its validity, such notice must reach the party to whom it is addressed within the period stipulated.
- CANCELLATION OF ORDER**

Any purported cancellation of the Contract by the Buyer shall be effective only upon the Buyer paying a cancellation charge of 20% of the agreed price and:

 - if made in writing;
 - if accepted in writing by Danfoss; and
 - on payment by the Buyer of such loss, damage cost and expenses as may be notified to the Buyer by Danfoss as Danfoss may have incurred in connection with cancellation thereof.
- CANCELLATION ON ACCOUNT OF INSOLVENCY**

If before all the monies payable under the Contract are paid, the Buyer (being an individual or individuals) shall be the subject of bankruptcy proceedings or shall make any assignment or deed of arrangement for, or any composition with creditors generally, or (being a company) shall become the subject of a winding-up or of the appointment of a receiver or receiver and manager, or shall make any arrangement with its creditors generally, or if any execution is levied or any distress is threatened or made at any premises occupied by the Buyer, or if the Buyer ceases to carry on business, then without prejudice to the rights of Danfoss to exercise any other remedies, Danfoss shall be entitled to rescind the Contract and suspend any further deliveries under the Contract without any liability to Danfoss, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- SITE WORK**
 - If the Services are to be carried out at the premises of the Buyer or at his request at the premises of any other person, then the Buyer undertakes to provide or to procure the provision free of charge of:
 - proper and safe protection of all goods, tool, plant and equipment and materials on site;
 - free and safe access to the site and to the point at which the work is to be executed and during Danfoss' working hours;
 - all facilities and services necessary to enable such work to be carried out safely and expeditiously including but not limited to adequate supervision;
 - if such work involves the installation of any goods, all builder's work, foundations, cutting away and making good required and ready availability of all plant and equipment so as to permit such goods to be tested forthwith on completion of such work and the Buyer shall pay to Danfoss the amount of any expenses incurred by the Danfoss by reason of any breach by the Buyer of any of its undertakings in this sub-clause.
 - if arriving at the Buyer's site on the contracted date, Danfoss is unable to carry out the Service due to on site delays beyond the control of Danfoss, Danfoss reserves the right to invoice the Buyer for additional "waiting time", at the current rate for Services.
 - Where the Goods and Services are to be supplied on site, they shall at all times be at the sole risk of the Buyer and the Buyer shall indemnify Danfoss and its servants and agents for any loss, damage or injury at such site.
- CLAUSE HEADING**

Clause headings have been inserted in these Conditions merely to facilitate reference and shall have no bearing on the interpretation of any of the provisions.

Danfoss