

GENERAL TERMS & CONDITIONS OF SALE

(Version 1.0)

These terms and conditions stated herein (this "Agreement") govern the supply or sale of goods ("Products") and provision of services ("Services") by Smartech Sales & Trading Sdn Bhd ("Smartech") to the customer, which is identified in the accompanying sales quotation, purchase order, credit application, order confirmation, or invoice ("Customer"). This Agreement takes precedence over Customer's supplemental or conflicting terms and conditions, and the terms of any purchase order which seeks to vary or amend or is in conflict with this Agreement are hereby expressly objected to. Neither Smartech's acceptance of order by commencement of performance or delivery shall be deemed or construed as acceptance of Customer's supplemental or conflicting terms and conditions. Customer's acknowledgement of order confirmation or acceptance of Products and/or Services from Smartech shall be deemed to constitute acceptance of this Agreement.

1. General

- 1.1 Any variations or deviations from this Agreement and additional terms must be accepted or made in writing by an authorised representative of Smartech of rank General Manager and higher, and be appended hereto ("Approved Special Conditions").
- 1.2 All appendices attached hereto ("Appendices") shall be deemed to form and be read and construed as part of this Agreement.
- 1.3 In the event of any ambiguity, inconsistency or conflict between this Agreement and provisions of the Appendices, this Agreement shall take precedence and prevail over the Appendices, save for the Approved Special Conditions.
- 1.4 The most current version of these terms and conditions can be found at www.smart-hvac.com.my. References to the "Smartech website" include Smartech's website and any other catalogue of products published by Smartech in any medium.
- 1.5 All descriptions of the Products and Services contained on the Smartech website or otherwise communicated to the Customer are approximate only and shall not form any part of the contract between Smartech and the Customer. Smartech shall not be liable to the Customer for any errors or omissions on its website, the product catalogue or other product advertisement. The advertising of products and services on the Smartech website is not an offer capable of acceptance; it merely constitutes an invitation by Smartech for the Customer to make an offer to purchase Products and/or Services.

2. Pricing & Taxes

- 2.1 All prices quoted are inclusive of prevailing sales tax rate.
- 2.2 Unless otherwise stated, prices quoted are for ex-factory delivery or shipment to be arranged by the Customer at Customer's own expense; and exclude all transportation and site hoisting charges.
- 2.3 Customer agrees to indemnify and hold Smartech harmless for any liability for tax in connection with the sale, as well as the collection or withholding thereof, including penalties and interest thereon.

3. Price Adjustment

- 3.1 Unless specifically stated in quotations, all prices up to time of order confirmation issued by Smartech are subject to price adjustment in case there are significant variations in manufacturing costs, import duties, taxes and government policy.
- 3.2 Smartech reserves the right not to accept any purchase order if the delivery or shipment of Products exceeds six (6) months.

4. Payment Terms

- 4.1 Unless otherwise agreed in writing by Smartech, Customer shall make 30% down-payment upon confirmation of order, the balance 70% shall be paid by Cash or Irrevocable Confirmed Letter of Credit at Sight, to be issued at least four (4) weeks before the completion date of production or date of ex-factory delivery.
- 4.2 Credit terms (subject to satisfactory references and at Smartech's absolute discretion) are available. If credit has been granted, on acceptance of Customer's order, Smartech will issue the Customer with an invoice. The standard credit term by which payment must be made is 30 days from date of invoice. All payments must be made without any set-off, deduction or counterclaim.
- 4.3 If any sum is not paid on the due date for payment then, without prejudice to any other right or remedy:-
 - (a) All sums then outstanding from the Customer will immediately become due and payable notwithstanding that such sums would not otherwise be due until a later date;
 - (b) The Customer will be liable to pay all expenses and legal costs incurred by Smartech in relation to obtaining or seeking to obtain an appropriate remedy;
 - (c) Smartech may charge the Customer interest from the due date until payment is made in full (both before and after any judgement) on all outstanding sums at the rate of 1.5% per month (or 18% per annum) compounded monthly;
 - (d) Treat this Agreement and all other contracts as repudiated by the Customer if the Customer fails to pay all such outstanding sums within 14 days of notice by Smartech; and
 - (e) Suspend delivery of Products and Services and/or commissioning of the Products under that or any other contract for as long as the default continues.

5. Prompt Collection & Payment Discount ("PCPD")

- 5.1 Whenever PCPD is applicable to a purchase order, the discount will be given or credited to Customer's account provided the Customer collects the Products or accept delivery of Products and/or Services in accordance to prior agreed schedule and has settled full payment as per tax invoice strictly within the agreed payment terms or period.
- 5.2 Failure to settle full payment strictly within the agreed payment term will result in cancellation of PCPD whenever applicable and the terms as per Clause 4.3 above shall apply.

6. Late Delivery

- 6.1 Unless specifically agreed in writing by Smartech, Smartech will not accept any late delivery penalty or be liable for any damages resulting from the failure to deliver within the time stated.
- 6.2 In the event Smartech fails to meet the committed delivery date as stipulated in the order confirmation by more than 30 days, Customer may cancel a particular order or a particular item of an order subject to cancellation charges as per Clause 8 below.

7. Collection of Finished Products

- 7.1 All finished Products are to be collected by the Customer within 14 days after agreed scheduled delivery date. If the finished Products are not collected within the above-stipulated 14-days period, Smartech shall issue an invoice for the uncollected finished Products kept in the factory premise and the invoice shall be payable in accordance to agreed payment terms.
- 7.2 If the finished Products remain uncollected after 30 days from agreed scheduled delivery date, Smartech shall impose a storage charge of 2% per 30-days period based on the total sales price of the Products until collection takes place.
- 7.3 If payment due is not fully settled and the said Products remain uncollected after 120 days, Smartech reserves the right to dispose off the Products and treat the order as cancelled, and the cancellation charges of 80% of the total sales price of Products shall be imposed.

8. Cancellation of Order

- 8.1 Cancellation of a complete or partial order by the Customer is subject to the following cancellation charges:-
- (a) 25% of the sales price of the items cancelled or of complete order cancelled, within 14 days of acceptance of order;
 - (b) 40% of the sales price of the items cancelled between 15 to 45 days after acceptance of order;
 - (c) 60% of the sales price of the items cancelled 46 days after acceptance of order; or
 - (d) 80% of the sales price of items cancelled when the unit and/or Product is completed or in final stage of assembly, whichever is higher in value.
- 8.2 In the event, within 14 days after date of order confirmation, Smartech informs the Customer that the required delivery date cannot be met, the Customer may cancel the order at no charge. Otherwise, Clause 6 of this Agreement shall apply.

9. Risk of Loss & Ownership

- 9.1 Risk of loss and damage passes to the Customer upon the Products leaving the factory premise, unless the Customer wrongfully fails to take delivery of the Products, in which case such risk shall pass to the Customer at the time when Smartech has attempted to deliver the Products.
- 9.2 Ownership of Products supplied shall not pass to the Customer until full payment of the total sales price of the Products, and of all other amounts owing to Smartech has been made (in cash or cleared funds). If the Customer is late in paying any sum to Smartech, then Smartech shall be entitled to the immediate return of all Products where ownership has not passed to the Customer. The Customer authorises Smartech and its agents to recover any such Products in such circumstance and to enter any premises of the Customer for that purpose.
- 9.3 Demand for or recovery of the Products by Smartech shall not in itself discharge either the Customer's liability to pay the whole of the total sales price and take delivery of the Products or Smartech's right to sue for the whole of the total sales price.

10. Warranty

- 10.1 Smartech warrants to the Customer that under normal use and service, all Products sold are free from defects in material and workmanship for a period of 12 months after the date of start-up or commissioning; and not later than 18 months after shipment, whichever comes earlier ("Warranty Period").
- 10.2 Warranty is voided if:-
- (a) The model/ serial number of product unit or compressor has been altered, tampered with, or removed;
 - (b) The product unit has been tampered with, subject to misuse, negligence and damaged while in transit;
 - (c) The product unit has not been installed, maintained or operated in accordance with the instructions given by manufacturer or Smartech, or in accordance with the industry's acceptable practices;
 - (d) The product unit has undergone repairs, modifications or connections prior to authorization by Smartech;
 - (e) The product unit is installed in hazardous and corrosive environment unless the product ordered is specifically designed to be installed in such environment;
 - (f) Defects are caused by abnormal voltage or the incoming power supply is from a generator;
 - (g) Defects are caused by fire, lightning and other natural disasters or where defect is due to deviation from recommended application and installation;
 - (h) Defects are caused by household pests such as lizards, rat, cockroach, etc.;
 - (i) Defects are caused by unit installed near to sources of oil mist in which may adhere to the heat exchanger and results in heat exchange reduction, water mists & spitting, etc.; or
 - (j) Defects are caused by chemical reaction, excessive heat, excessive dust, corrosive surroundings, such as cement factory, animal farm, etc.
- 10.3 Any variations in warranty terms shall be stated or prior approved in writing as per Clause 1.1 above.

- 10.4 If prior to the expiration of the Warranty Period, Customer informs Smartech in writing of any breach of this warranty, then Smartech may repair or replace the Product that gave rise to the breach or, in Smartech's sole and exclusive discretion, refund the sum paid by the Customer for the said Product.
- 10.5 The express warranty granted above shall extend directly to Customer and not to Customer's customers, agents or representatives. The express warranty granted above is in lieu of all other warranties, whether express or implied, including without limitation any implied warranties of fitness for a particular purpose, merchantability, or non-infringement of intellectual property rights. All other warranties are hereby specifically disclaimed by Smartech.

11. Commissioning

- 11.1 Whenever commissioning is applicable to the supply of Products, Customer shall provide minimum 2-weeks' notice to Smartech of commissioning commencement date, and commissioning commencement date shall not be later than 6 months upon collection and/or delivery of Products.
- 11.2 Customer shall give Smartech a 3-weeks' period for expected commissioning duration.
- 11.3 Customer shall not allow any persons other than Smartech's engineers or technicians to carry out the commissioning of Products; otherwise, the warranty provided is void.
- 11.4 Smartech reserves the right not to carry out commissioning of Products until and unless full payment of the total sales price of the Products is made by the Customer.

12. Limitation of Liability

The Customer is solely responsible for the safe use and correct application of Smartech's Product sold. In no event shall Smartech be liable for any economic loss, punitive damages, loss of revenue, loss of profits or expected future business, damage to reputation or goodwill, loss of any order or contract or any consequential or indirect loss or damage, all as may result from, or be connected with any express or implied terms of the contract between Smartech and the Customer, or of any order accepted by Smartech; any duty of any kind imposed on Smartech by law arising out of or in relation to the contract between Smartech and the Customer or order; any defect in the Products or Services; Intellectual property rights infringement; or any other loss whatsoever arising out of this Agreement.

13. Assignment and Set-Off

Customer shall not assign any rights or obligations under this Agreement without the prior written consent of Smartech. The Customer hereby waives any and all rights to offset existing and future claims against any payments due for Products sold under this Agreement or under any other agreement that the Customer and Smartech may have, and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by the Customer or on its behalf.

14. Confidentiality

Except for non-confidential documentation provided to Customer for distribution with a corresponding Product, Customer acknowledges that all technical, commercial and financial information (including without limitation any source code) disclosed to Customer by Smartech is the confidential information of Smartech. Customer shall not disclose any such confidential information to any third party and shall not use any such confidential information for any purpose other than as agreed by the parties and in conformance with the sale transactions contemplated herein.

15. Force Majeure

A force majeure event is any event beyond the reasonable control of Smartech (including but not limited to government actions, war, riot, fire, explosion, flood, labour strikes and disputes, epidemics, pandemics, other Acts-of-God, traffic congestion, the downtime of any external line, or Smartech's inability to procure services, materials or articles required for the performance of the contract except at enhanced prices). If Smartech is prevented or restricted from carrying out all or any of its obligations under this Agreement by reason of any force majeure event, then Smartech shall be relieved of its obligations during the period that such event continues, and shall not be liable for any delay and/or failure in the performance of its obligations during such period. Smartech shall be allowed a reasonable period to complete the manufacture and shipment of Products.

16. Severability

The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

17. Change in Status

The liabilities and/or obligations created by this Agreement shall continue to be valid and binding for all purposes notwithstanding any change in name or change by amalgamation, reconstruction, reorganisation, restructuring or otherwise of the Customer or Smartech.

18. Time

Time wherever mentioned shall be of the essence.

19. Governing Law and Jurisdiction

The construction, validity and performance of this Agreement shall be governed and interpreted in accordance with the laws of Malaysia and the Customer unconditionally and irrevocably submits to the exclusive jurisdiction of the courts of Malaysia.
