

## TERMS AND CONDITIONS OF SALE

4 Star Ag Refrigeration, Inc.

**General Provisions:** "Seller" when used herein means 4 Star Ag Refrigeration, Inc. "Purchaser" when used herein means the person, firm or corporation to whom this proposal or quotation is addressed. "Equipment" or "Products" means those articles, supplies, drawings, data or other property or services described herein. This proposal, contract or quotation cannot be changed by any verbal agreement. Only variations or modifications to the contract which are made in writing signed by Seller and Purchaser shall be enforceable. Any failure by Seller to enforce its rights under this contract will not be deemed a waiver of such rights. The Seller reserves the right to change, discontinue or modify the design and construction of any product or substitute material equal to or superior to that originally proposal or quotation.

**Pricing:** Prices set forth in Seller's proposal shall remain a firm offer for thirty (30) days unless otherwise stated in the proposal. Within such period, the proposal shall convert into an order provided that all of the following have occurred: (1) Buyer submits either a purchase order or a copy of Seller's proposal displaying an authorized signature of Buyer within the offer time period; (2) Buyer provides a deposit payment according to the payment schedule in the proposal; and (3) Buyer requests a shipment date that is no later than sixty (60) days after the date of Seller's submission of a target completion date. In the event Buyer's requested shipment date that is later than sixty (60) days beyond such submission target completion date, the Seller's reserves the right to price adjustments. subject to an order beyond the scheduled shipment date, pricing shall be subject to the same adjustment.

**Payments:** Unless otherwise stated on the Sellers's proposal or quotation terms of payment shall be net cash in thirty (30) days from date of invoice, subject to Seller's prior credit approval. If the Buyer shall fail to make any payments in accordance with the terms and conditions of sale, the Seller, in addition to its other rights and remedies but not in limitation thereof, may, at its option, without prior notice, cancel this order as to any undelivered products or defer shipments or deliveries, or retrieve any or all items already shipped or delivered hereunder, or under any other agreement between Buyer and Seller, except upon Seller's receipt of cash or such security as Seller considers satisfactory. Seller reserves the right to impose an interest charge (not exceeding the lawful maximum) on the balance of each invoice not paid on its due date for the period from the due date to the date of receipt of payment by Seller. In the event Buyer's failure to make timely payments to Seller results in Seller incurring additional costs, including but not limited to collection expenses and attorneys' fees, said costs shall be added to the amount due Seller from Buyer. Buyer shall have no right to any discount or retainage and shall not withhold payment as a set-off on Seller's invoice in any amount. Buyer shall not inhibit or obstruct sellers right of retrieval herein.

**Taxes:** Unless otherwise stated on the Seller's proposal or quotation, prices do not include any federal, state or local sales, use or value-added taxes payable in connection with this order. All such taxes shall be paid by Buyer. Buyer shall indemnify Seller from and against such taxes, plus interest and penalties thereon, including, but not limited to, tax, interest and penalties resulting from a failure to collect such taxes because of Seller's reliance upon an invalid exemption certificate provided to Seller.

**Allocation of Risk:** Deliveries shall be considered made when the products subject to this order are loaded on the carrier. At such time, and all risk of loss, damage or shortage shall pass to Buyer, and any claims based thereon must be filed by Buyer with the carrier.

**Force Majeure:** Seller shall under no circumstances be liable for any loss or damage resulting from delay or failure in the performance of its obligations under this contract to the extent that such performance is delayed or prevented by: fires, floods, war, terrorist activities, riots, strikes, freight embargoes or transportation delays, shortage of labor, inability to secure fuel, material, supplies or power at current prices, or on account of shortages thereof; acts of God or of the public enemy; any existing or future laws or acts of the federal, state or local government (including specifically, but not exclusively, any orders, rules or regulations issued by any official or agency of any such government) affecting the conduct of Seller's business with which Seller in its judgment and discretion deems it advisable to comply as a legal or patriotic duty, or to any case beyond the Seller's reasonable control.

**Warranties:** At such time as payment is completed according to the contract terms and terms herein, seller warrants that the equipment products sold under this contract shall be free from defects in material and workmanship for a period of twelve (12) months from the date of equipment startup or thirteen (13) months from the date of shipment, whichever occurs first. Original equipment components are warranted according to the manufacturer. Replacement parts provided by Seller under its original equipment warranty obligations are warranted against defects in materials and workmanship for a period of twelve (12) months from date of shipment or until expiration of their original warranty, whichever is the first to occur. Written notice of any defect shall be given to Seller immediately upon discovery by Buyer, and shall fully describe the claimed defect. Defective parts shall be repaired or replaced F.O.B. point of shipment, provided that inspection by Seller verifies the claimed defect(s). This shall be Buyer's exclusive

remedy. **This warranty does not cover the costs of removing, shipping or reinstalling the equipment. Repairs made without the prior written approval of Seller shall void all warranties covering material and workmanship.** Any descriptions of the product(s) in the contract are for the sole purpose of identification and do not constitute a warranty. In the interest of product improvement, Seller reserves the right to change specifications and product design without incurring any liability therefore. The foregoing express warranties or those set forth elsewhere on this document are the only warranties of Seller applicable to the product(s) sold under this contract. **All other warranties, whether verbal or written, and all warranties implied by law, including any warranties of merchantability or fitness for a particular purpose, are hereby excluded. Failure on the part of Buyer or of other parties to properly maintain the product(s) sold under this contract, or the operation of such product(s), by Buyer and/or other parties under conditions more severe than those for which such product(s) were designed, shall void all warranties covering materials and workmanship. Seller's warranties do not apply to defects in product(s) for which payment in full has not been received by Seller, and said warranties do not cover normal wear and tear or the erosion, corrosion and/or deterioration of the product(s) from unusual causes. No warranties by Seller shall apply to accessories manufactured by others,** inasmuch as they are warranted separately by their respective manufacturers, except as stated above. Buyer assumes liability for and shall bear the costs of compliance with all laws, regulations, codes standards or ordinances applicable to the location, operation and maintenance of the product(s) sold under this contract.

**Cancellation/Changes>Returns:** Purchase cannot cancel orders under any circumstances without Purchaser first reaching an agreement in writing with Seller covering all Seller's expenses. At a minimum such an agreement must reimburse the Seller for all expenses incurred (included but not limited to costs of purchased materials, engineering costs, and reasonable mark-up to cover overhead and profit.

**Liability/Indemnification:** Seller shall not be liable for any damages caused by delay in delivery of the products. Buyer shall hold harmless and indemnify Seller from and against all liability, claims, losses, damages, and expenses (including attorneys' fees) for personal injury and property damage arising out of Buyer's improper unloading, handling, or use of the products subject to this order, and for Buyer's infringement of another's property rights. The Seller's maximum liability from any cause whatsoever, whether in breach of contract, tort (including negligence), strict liability, or otherwise, shall not exceed the contract price. Neither Buyer nor Seller shall in any event be liable to the other, whether such liability arises out of breach of contract, tort (including negligence), strict liability or any other cause or form of action, for any consequential, special, indirect or incidental damages, including but not limited to loss of actual or anticipated profits or loss of use arising out of this contract.

**Export Transactions:** Buyer shall comply with all applicable export laws and regulations of the U.S. Government, and shall hold harmless and indemnify Seller from and against all liability, damages, and expenses (including attorneys' fees) incurred by Seller as a result of Buyer's violation of any U.S. Government export and/or international antiboycott laws or regulations.

**Confidentiality:** All of Seller's specifications, designs, drawings, indications of physical, chemical and electronic properties are made in good faith and are approximate indications only and are not binding in detail unless Purchaser has specified in writing a particular indication upon which he is relying and Seller shall be entitled to vary the same and/or to correct errors and omissions provided the Products remain in substantial conformity with the contractual requirements. The Designs including all copyright, design right and other intellectual property in them shall as between the parties be the property of Seller, and Purchaser is not entitled to make any use of the Designs other than for the purpose of this proposal or contract. Any inventions, modifications, improvements, techniques or know-how affecting the Products made or gained in the course of performing this contract shall belong to the Seller. Neither party shall disclose to third parties or use for its own purposes any confidential information or trade secrets of the other party.