Updated 6th February 2024

HUXFORD REFRIGERATION
TERMS & CONDITIONS OF SALE

Huxford Refrigeration

ABN: 23138853773

Phone: 1800 489 367
Email: sales@huxford.com.au
Web: www.huxford.com.au

We “Huxford Refrigeration” reserve the right to modify and/or update any of our “Terms & Conditions” or “Policies” at any time. Please refer to our website “terms and conditions” page link (found in the footer of all website pages) for the latest versions and more information: http://huxford.com.au/terms-and-conditions .

Below is the list of Huxford Refrigeration Terms & Conditions and/or Policies:

- **Huxford Refrigeration Terms & Conditions of Sale (this document)**
- **Huxford Refrigeration Terms & Conditions of Warranty**
- **Huxford Refrigeration Terms & Conditions of Website**
- **Huxford Refrigeration Privacy Policy**

Huxford Refrigeration Terms and Conditions of Sale

Certain legislation in Australia may provide consumer guarantees or impose obligations on Huxford Refrigeration which cannot be excluded, restricted or modified, or only to a limited extent. These Terms and Conditions are subject to such legislation, including without limitation the Australian Consumer Law.

1. Definitions

- **Australian Consumer Law** means the law as set out in Schedule 2 of the Competition and Consumer Act 2010 as amended from time to time.
- **Contract** means a contract for sale by Huxford Refrigeration to the Customer of the Products and/or services incorporating these Terms and Conditions.
- **Consumer Contract** means a contract for the acquisition of goods or services as a 'consumer' as that term is defined in section 3 of the Australian Consumer Law.
- **Critical Component** means any component of a system used in High Risk Circumstances.
- **Customer** means the purchaser, person or legal entity identified in Huxford Refrigeration's Quotation or Invoice.
- **High Risk Activities** means use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, medical life support, mass and air traffic control, weapons systems, life-support machines or any other application in which the failure of the Product/s could lead directly to death, personal injury or severe physical or property damage.
- **Huxford** means Huxford Refrigeration.
- **Huxford Refrigeration-branded** means refrigeration products that are marked with the Huxford Refrigeration brand, including all standard components, but does not include:
    (a) software and/or programming, accessories or parts added to the Huxford Refrigeration-branded products after they are shipped from Huxford Refrigeration;
    (b) accessories or parts added to the Huxford Refrigeration-branded refrigeration products through Huxford Refrigeration's Factory at the Customer's request;
    (c) accessories or parts that are not installed in the Huxford Refrigeration factory; or
    (d) Third Party Products that are software and/or programming, peripherals, LED tubes, etc, unless they are included on Huxford Refrigeration's standard price list.
- **Huxford Refrigeration Terms & Conditions of Warranty** means the Standard **Huxford Refrigeration Terms & Conditions of Warranty** which takes legal precedence in any event relating to warranty. This document is available on the Huxford Refrigeration website Huxford Refrigeration Warranty Terms and Conditions.
- **Order Confirmation** means formal acknowledgement of Product ordered by Customer, sent by Huxford Refrigeration.
- **Place of Delivery** means the place designated by the Customer and agreed to by Huxford Refrigeration for delivery of Product.
- **Price** means the price as per Huxford Refrigeration Quotation, Website Pricing and Order Confirmation and the latter will have precedence.

- **Product, Products & Product/s** means the product or products as described in the Order Confirmation and may include Huxford Refrigeration-branded products, third party products and Service Offerings.
- **Service Offerings** means the different service options offered by Huxford Refrigeration for the Products or any part of them and for varying periods, as described in Huxford Refrigeration's published literature, including but not limited to Huxford Refrigeration's Invoice and/or Huxford Refrigeration's Service Description.
- **Small Business Contract** means a small business contract as defined in section 23 of the Australian Consumer Law.
- **Standard Warranty** means the warranty protection that comes standard with purchases from Huxford Refrigeration, as set out in the **Huxford Refrigeration Warranty Terms and Conditions** document on Huxford Refrigeration's website.
- **Third Party Products** means products other than Huxford Refrigeration-branded.
- **Us** means Huxford Refrigeration.
- **We** means Huxford Refrigeration.

2. Formation of Contract

2.1 No Contract comes into existence until the Customer's order has been accepted by Huxford Refrigeration and such acceptance has been received by the Customer. The Contract is deemed to be concluded at the time and place where such acceptance is received by the Customer. The Customer warrants that it is buying for its own internal use only and not for re-sale purposes.

2.2 The products sold and/or services rendered are subject to these Terms and Conditions to the exclusion of any other terms and conditions stipulated or referred to by the Customer. The Customer acknowledges that it is aware of the contents of and agrees to be bound by these Terms and Conditions. Neither Huxford Refrigeration's acknowledgement of a purchase order nor its failure to object to conflicting, different, or additional terms and conditions in a purchase order will be deemed an acceptance of such terms and conditions or a waiver of the provisions.

3. Orders, Price and Payment

3.1 Unless credit terms have been expressly agreed by Huxford Refrigeration, payment for the Products and/or services must be made in full before physical delivery of Products and/or services.

3.2 The Customer will pay for all applicable shipping and handling charges.

3.3 The Customer will bear all country, provincial, government, state and local sales, use, goods and services, value added, excise, privilege and similar levies/taxes.

3.4 Time for payment is of the essence. Huxford Refrigeration reserves the right to charge interest at the rate of 2% above the base commercial floating rate for Bendigo Bank in Adelaide.

4. Software and/or Programming

4.1 All software and/or programming provided is subject to the terms and conditions of the license agreement relating to that software and/or programming. The Customer acknowledges its obligations to abide by such license agreements. The customer acknowledges that Huxford Refrigeration does not make any express warranty in relation to any software and/or programming under these Terms and Conditions of Sale. In addition to any rights the Customer may have under statute, all software and/or programming is warranted in accordance with the license agreement that governs its use.

4.2 All rights, title or interest in respect of the intellectual property rights in the software and/or programming remain with Huxford Refrigeration or the licensor of the software and/or programming at all times.

5. Title and Risk

Title to and risk in the Products passes to the Customer upon delivery of the Products to the Customer. Title to those products, which are software and/or programming, shall remain with the applicable licensors at all times.

6. Delivery

6.1 Huxford Refrigeration will deliver the Products to the Place of Delivery.

6.2 For the efficiency of Huxford Refrigeration's production and fulfilment procedures, it may be necessary for Huxford Refrigeration to deliver the Products by instalments in any sequence. Except as provided in clause 6.4, the Customer may not cancel the Contract where Products are delivered by instalments.

6.3 Any dates provided by Huxford Refrigeration for the delivery of the Products are estimates only and will not form part of the Contract. Actual delivery date will be affected by factors such as clearance of payment, Customer's location and availability of parts for the Products. For non-Consumer Contracts and non-Small Business Contracts, Huxford Refrigeration will not be liable for any delay in delivery of the products and/or services, howsoever caused and for Consumer Contacts and Small Business Contracts Huxford Refrigeration will not be liable for any delay in delivery of the Products and/or services which is outside of Huxford Refrigeration’s control.

6.4 The Customer may cancel an order for Products purchased under a Consumer Contract or a Small Business Contract if Huxford Refrigeration is unable to deliver the Products within a reasonable period from the estimated delivery date.

6.5 Huxford Refrigeration has a policy of on-going Product update and revision. As a result, Huxford Refrigeration may revise and/or discontinue Products at any time without notice.

6.6 Where Products ordered under a Consumer Contract or a Small Business Contract have been revised and/or discontinued, Huxford Refrigeration will supply revised or updated Products with the same or better functionality and performance of the Products ordered. The Customer accepts that Huxford Refrigeration's policy may result in differences between the specification of Products delivered to the Customer and the specification of Products ordered.

7. Acceptance of Products

7.1 Unless the Customer notifies Huxford Refrigeration to the contrary on the day of delivery and such notification is confirmed in writing within two days, the Products will be deemed to have been accepted by the Customer. The Customer will not be entitled to withhold payment of all or any of the price of the Products whilst any claim is being investigated by Huxford Refrigeration.

7.2 New Huxford Refrigeration-branded Products (excluding Huxford Refrigeration co-branded products) purchased under these Terms and Conditions directly from Huxford Refrigeration by the Customer may only be returned in accordance with item 19.

7.3 Nothing in clause 7.1 or 7.2 affects a Customer's right to claim against Huxford Refrigeration for a faulty product under Huxford Refrigeration's Standard Warranty, or under their rights under statute.

8. Warranty

8.1 Refer to **Huxford Refrigeration Warranty Terms and Conditions** document for all Warranty information. In the event of any error or conflicting information regarding Warranty Terms in this document the **Huxford Refrigeration Warranty Terms and Conditions** document take precedence.

8.2 Nothing in this clause 8 affects a Customer's rights under the Australian Consumer Law.

8.3 Huxford Refrigeration does not give any warranty that Products purchased under a Contract other than a Consumer Contract are fit for any particular purpose.

8.6 The **Standard Warranty** or **Extendable Customer Care Warranty** is given in place of all excludable warranties, conditions, terms, undertakings and obligations implied by statute, common law, trade usage, course of dealing or otherwise including warranties or conditions of merchantability, fitness for purpose, satisfactory quality and/or compliance with description. The **Huxford Refrigeration Warranty Terms and Conditions** applies in additional to all consumer guarantees under the ACL.

8.7 The **Standard Warranty** or **Extendable Customer Care Warranty** does not apply to:

(a) Huxford Refrigeration-branded goods purchased in an auction;

(b) non-Huxford Refrigeration branded products, supplied by Huxford Refrigeration and forming part of a Product; and
(c) goods which are not standard Huxford Refrigeration assemblies or configurations as defined on Huxford Refrigeration's published price list.

8.8 Huxford Refrigeration will provide support for non Huxford Refrigeration-branded products purchased under a Consumer Contract. Huxford Refrigeration does not manufacture its non Huxford Refrigeration-branded products, and may not be able to provide repair facilities or spare parts in relation to them. The Customer acknowledges that the reasonable time for Huxford Refrigeration to repair non Huxford Refrigeration-branded products is longer than the reasonable time for the manufacturer to repair the same product.

8.9 Non Huxford Refrigeration-branded products may be accompanied by their manufacturer's standard warranties. The Customer acknowledges that where support is required in relation to non Huxford Refrigeration-branded products it may be more efficient and expedient to seek support under the manufacturer's standard warranties, at least at first instance.

8.11 Products sold through the Huxford Refrigeration Australia store are ‘as new’ or refurbished Products (they may be used) and are therefore offered at substantially reduced prices compared to new or custom-built Products. The inventory of these Products changes frequently. Many of these Products are supplied as ‘one-offs’ or are supplied in limited numbers. If such an outlet Product suffers a ‘major defect’ under the Australian Consumer Law, replacement Products of the same type and similar value may not be reasonably available to Huxford Refrigeration. In circumstances where a replacement Product (for an outlet Product that has suffered a major defect) is not reasonably available to Huxford Refrigeration, Huxford Refrigeration may not be able to offer a replacement Product, and Huxford Refrigeration will refund the price paid by the Customer for the defective Product in accordance with the Australian Consumer Law.

9. Service and Technical Support

Huxford Refrigeration may provide general service and technical support to the Customer in accordance with the then-current service and technical support policies in effect. Service and support offerings may vary from product to product. If Customer purchases optional services and support as listed on Customer's invoice, Huxford Refrigeration will provide the optional service and support to Customer in accordance with the then-current terms and conditions in the optional service contract between Huxford Refrigeration and Customer in addition to the Standard Warranty. Huxford Refrigeration may, at its discretion, revise its general and optional service and support programs and the terms and conditions that govern them. Huxford Refrigeration has no obligation to provide service or support until Huxford Refrigeration has received full payment for the Product or service/support contract for which service or support is requested.

10. Liability

10.1 For goods and services which are not supplied under a Consumer Contract or Small Business Contract Huxford Refrigeration's total liability in respect of each event or series of connected events will not exceed the total price paid for the purchase of products and/or services under these Terms and Conditions.

10.2 The Customer will indemnify Huxford Refrigeration and keep Huxford Refrigeration fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the Customer, its employees, agents or sub-contractors in connection with the purchase, use or performance of any Huxford Refrigeration products or services.

10.3 Huxford Refrigeration excludes liability for all consequential loss arising out of or in connection with the purchase, use or performance of any products or services by you from Huxford Refrigeration, including liablity for loss of income, loss of profits, loss of a contract, data loss, loss of goodwill, loss of potential business, or any damage to personal property or any personal injury whether direct or indirect, or any kind, unless:

(a) such loss could have been expected to result from a failure by Huxford Refrigeration to meet a consumer guarantee and such loss was reasonably foreseeable; or
(b) where Huxford Refrigeration is the manufacturer or importer of the relevant products and such loss has arisen due to the relevant products having a safety defect within the meaning of section 9 of the Australian Consumer Law and further that none of the defences established under section 142 of the Australian Consumer Law apply to the relevant products.

10.4 Any service response times stated by Huxford Refrigeration in the service contracts are approximate only and Huxford Refrigeration will not be liable for any direct or indirect loss or damage arising from its failure to meet such response times, providing that for services supplied under a Consumer Contract the services are delivered within a reasonable time where there is no agreed date for delivery.

10.5 To the extent permitted by law, any typographical, clerical or other error or omission in sales literature, quotation, price list, acceptance of offer, invoice or other documents or information issued by Huxford Refrigeration will be subject to correction without any liability on the part of Huxford Refrigeration.

10.6 In relation to goods or services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Huxford Refrigeration's liability for breach of a guarantee implied into a Contract which cannot lawfully be excluded is limited, at Huxford Refrigeration's option, to: (a) in the case of Products, the replacement of the Products or the supply of equivalent Products; the repair of such Products; the payment of the cost of replacing the Products or of acquiring equivalent products; or the payment of the cost of having the Products repaired; OR (b) in the case of services, the supplying of services again; or the payment of the cost of having services supplied again.

11. Backup of Data

11.1 Products are complex items of equipment that may occasionally fail, due to external causes or internal faults. This failure can result in the loss, corruption, deletion or alteration of software and/or programming or data (including user-generated data).

11.2 Unless the Customer regularly and continually backs up all data, software and/or programming and programs, these may be lost or corrupted in the event of failure.

11.3 Customer agrees to regularly and continually back up all data and software and/or programming stored on the Product, and to complete a backup prior to seeking any general service and technical support from Huxford Refrigeration.

12. Use of Products

12.1 Huxford Refrigeration Products are designed for specific applications and purposes to work under certain operating conditions. These are set out on the Huxford Refrigeration website. Customer's use of the Product other than in accordance with any manual, operating instructions, specified operating conditions or any other information on the Huxford Refrigeration website may damage the Product and data stored on it. Such use may adversely affect the Customer's rights.

12.2 The Customer agrees to only use the Product in accordance with any manual and any specified operating conditions.

13. High Risk Application Disclaimer

The Products are not fault-tolerant and are not designed or intended for use in High Risk Activities. Huxford Refrigeration expressly disclaims any express or implied warranty of fitness for High Risk Activities.

14. Business Usage

Where Products are bought for business usage the Customer warrants to implement appropriate means and procedures to ensure operational continuity of the business in the event that the Product experiences any performance failures. This may include disaster recovery plans, comprehensive data back up plans and the implementation of redundant networks.

15. Force Majeure

Neither party will be liable for any delay in performing any of its obligations under these Terms and Conditions if such delay is caused by circumstances beyond the reasonable control of the party so delaying, and such party will be entitled to a reasonable extension of time for the performance of such obligations.

16. Export Restrictions

The Customer acknowledges that the Products licensed or sold hereunder, which may include technology and software and/or programming, are not only subject to the export control laws and regulations of the Australia but may also be subject to the export control laws and regulations of the country in which the Products are received. The Customer agrees to abide by all applicable export control laws and regulations. Under such laws and regulations, the Products purchased may not be sold, leased or otherwise transferred to restricted end-users or to restricted countries. In addition, the Products may not be sold, leased or otherwise transferred to, or utilized by, an end-user engaged in activities related to weapons of mass destruction, including but not necessarily limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons. The Customer understands that applicable requirements or restrictions may vary depending on the Products delivered and may change over time and that, to determine the precise controls applicable to the Products acquired, it may be necessary to refer to relevant laws and regulations.

17. Governing Law

These Terms and Conditions are governed by and construed in accordance with the laws of Queensland and are subject to the non-exclusive jurisdiction of the courts of Queensland.

18. General

18.1 The Customer must not assign or otherwise transfer any Contracts or any of its rights and obligations under these Terms and Conditions whether in whole or in part without the prior written consent of Huxford Refrigeration. Any such unauthorised assignment will be deemed null and void.
18.2 If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and Conditions and the remainder of the provisions in question will not be affected.
18.3 No failure or delay on Huxford Refrigeration's part in exercising any power or right under these Terms and Conditions operates as a waiver, nor does any single or partial exercise of any power or right preclude any other or further exercise, or the exercise of any other power or right.

19. Returns

Huxford Refrigeration does not offer any change of mind offering, it is solely up to the discretion of Huxford Refrigeration if Huxford will accept product/s for return. In any case this is offered only as credit for use on any other Huxford Refrigeration product/s, no money refunds or transfers will be accepted. In the event of any return the customer accepts that Huxford Refrigeration will charge a re-stocking fee of 30% of the paid purchase price (invoice price). In certain circumstances where Huxford Refrigeration may elect to offer a return, it will only be approved if all of the following conditions are met:

- each product line from the original invoice is a single unit; and
- the product was not specially ordered in for the customer; and
- the customer paid standard price (ie. website pricing, for resellers standard discount off retail price) and/or did not receive "special" pricing; and
- the product/s are shipped back to Huxford Refrigeration's nominated address at the customers expense; and
- the product/s are "as new" in perfect working condition and order with all originally supplied items including but not limited to: shelves, keys, operation manuals, etc; and
- Huxford Refrigeration has authorised and/or approved the return in writing (electronic or otherwise).

20. About Your Warranty

20.1 Your warranty will be valid:

(a) For a **Standard Warranty** - when you have paid the full price of the products covered by the warranty visit http://huxford.com.au/warranty/warranty-terms/

(b) When you have met the conditions of the Standard Warranty (refer 20.1a); and your customer obligations, which are detailed in the **Huxford Refrigeration Terms & Conditions of Warranty** have been met and confirmed by Huxford Refrigeration in writing.

20.2 To claim under your **warranty**, visit the Huxford Refrigeration website: http://huxford.com.au/warranty/warranty-service-request and refer to the **Huxford Refrigeration Terms & Conditions of Warranty** document for all **Huxford Refrigeration Terms & Conditions of Warranty.**

20.3 Your warranty will be valid for:

(a) For a **Standard Warranty** – the period stated on the Huxford website as long as customer obligations have been met and confirmed by Huxford.

20.4 Our goods come with consumer guarantees that cannot be excluded under the Australian Consumer Law (ACL).

20.5 Your warranty rights are in addition to your statutory rights as a consumer.

20.6 This Warranty is provided by Huxford Refrigeration Australia, please direct any questions or comments to:

Privacy Officer
Huxford Refrigeration

Phone: 1800 489 367
Email: sales@huxford.com.au