

## HC TERMS AND CONDITIONS OF SALE

1. The Parties are, **HC Heat, the Applicant** and the Surety who warrants that all the information stated in section 1 to 6 of the Credit Application are both true and correct at the time of submitting this credit application and who undertakes to amend and update the information from time to time by written notice failing which HC Heat may rely solely thereon, including the use thereof for notices and as the Applicant's chosen domicilium citandi et executandi for purposes of / or claims arising out of this Agreement. The Applicant and the Surety further acknowledge and agree to the terms and conditions upon which this credit agreement is entered into.

2. **HC Heat**, is a private company, duly represented with its address at corner of Amber and Serenade Roads, Elandsfontein, Gauteng, who nominates this address as it chosen domicilium citandi et executandi and the email address of leon.potgieter@hcaircon.com for purposes of notices arising out of this Agreement. HC Heat may be represented herein by Mr L Potgieter and/or Mr RK Kruger as the **Authorized Representatives**.

3. **This Agreement** means this document submitted to HC Heat with the full knowledge and understanding of the terms and conditions contained herein. This Agreement is without exception non-variable unless agreed to in writing between HC Heat's Authorized Representatives and that of the Applicant as stated in 1 above.

Any indulgence or waiver afforded to the Applicant by HC Heat shall not constitute or be construed as a novation or variation nor alter any term of this Agreement nor have the effect of limiting any of the rights HC Heat may have in terms hereof or any other legal remedy as the case may be.

4. **The Surety** hereby acknowledge and agree to the terms and conditions of this Agreement, and by affixing of his/her signature in section 4 of the Credit Application warrants that he/she has read and understood the joint and severable nature of the security hereby provided for the due and punctual performance by the Applicant as well as all the general terms and conditions contained herein. The Surety shall not be released from its obligations unless the Applicant settled all of its obligations and / or an alternative surety and security was established on the same terms and conditions, and for the full liability of the Applicant as agreed herein.

The Surety must seek confirmation of his/her release in writing from the Authorized Representatives of HC Heat.

HC Heat may, at its sole discretion elect to waive the requirement of security at any

time or, if initially waived, at a later stage deem it necessary to obtain security as envisaged in section 4 of the Credit Application and 4 herein. HC may suspend all further credit until such security is confirmed.

5. **HC Heat** hereby grants the Applicant a **credit facility** strictly governed by the number calendar days as agreed in section 5 of the Credit Application. The days shall be

calculated on normal calendar days and the calculation thereof shall include Saturdays, Sundays, public and religious holidays.

The credit limit shall at no times exceed the agreed limit as offered and accepted in section 5 of the Credit Application however always subject to 3, 4, 7.11 and in HC Heat sole discretion.

## 6. **Quote and Placement of Orders**

6.1 Upon enquiry by the Applicant HC Heat shall issue a written quote.

6.2 The Applicant shall provide all the information and specifications required. The quote by HC Heat shall remain open for acceptance by the Applicant to whom it is addressed for a period of 14 (fourteen) days from the date as reflected thereon.

The Applicant's written acceptance of the quote must be received by HC Heat within such 14 (fourteen) day period. The quote shall only be deemed to have been accepted if it is accompanied by a Purchase Order number failing which it shall be deemed to have lapsed. No order shall be processed without a valid Purchase Order Number.

HC Heat shall record the details of the order in a Customer Order Acknowledgment "COA".

## 6.3 **Illustrations, Diagrams, Sketches or Drawings**

The specifications and details as contained on the COA shall be instructive and the only operative document to be agreed or relied upon between the Parties applicable to each order and delivery.

## 6.4 **Specifications**

Should the Applicant instruct HC Heat to supply goods in accordance with specifications, measurements or other instructions, HC Heat shall not be liable for any loss, delays, or damages by the Applicant, or any third party supplied by the Applicant as a result of any error, discrepancy or defect in the specifications, measurements or other instruction.

## 6.5 **Substitution**

Should circumstance, beyond the reasonable control of the HC Heat cause any material or goods specified in the quote unavailable or otherwise required to complete the order, HC Heat may, with the notice to the Applicant, which approvals shall not unreasonably be withheld, substitute for such material or goods a suitable equivalent.

The substituted goods or components shall bear the same warranty as the goods originally specified by HC Heat.

In the event that the Applicant refuse substitution the date of delivery shall be extended having regard to the availability of the goods and or components insisted on by the Applicant and shall not constitute a breach of 7.3 below on the part of HC Heat.

## 7. **Deliveries**

Unless otherwise agreed in writing all orders are accepted on the basis of Ex Works "EXW" meaning that means that the HC Heat fulfils its obligation to deliver when it has made the goods available at its premises (i.e., **works, factory**, warehouse, etc) to the Applicant. The Applicant bears all costs and risks involved in taking the goods from the HC Heat's premises to the desired destination

### 7.1 **Place of Delivery**

If not arranged and agreed otherwise in writing, HC Heat shall effect delivery to the Applicant at the corner of Amber & Serenade Roads, Elandsfontein, Gauteng.

### 7.2 **Date of Delivery**

The estimated date of delivery shall be indicated on the COA issued HC Heat. The date thereon is the best possible estimate, disregarding any unforeseen circumstance or events outside the control of HC Heat in their estimation of the time required for production and assembly.

7.3 **Delivery within reasonable time.** Any delivery within reasonable limits of the estimated date shall not constitute a breach by HC Heat. For avoidance of doubt, payment shall remain due upon the agreed payment terms from statement date.

### 7.4 **Deliveries by Instalment**

Where an order is placed to be delivered in sequence or instalments the dates of delivery shall be agreed and recorded in the COA. The date of delivery of each order shall govern the calculation of the day upon which payment becomes due. HC Heat may invoice the Applicant for each instalment separately and obtain payment therefor. Should all or any of the payments, based on the instalment or sequence delivery remain unpaid, HC Heat may elect to cease all production on further deliveries and/or retain such further completed orders until all overdue payments are settled. In such circumstance the dates of delivery in 7.2 and 7.3 shall be adjusted with the number of days that payment is overdue on prior orders.

#### 7.4.1 **Notice of Delivery**

HC Heat shall notify the Applicant 1 day in advance of the delivery date and the parties shall confirm all arrangements specific to the delivery. Should delivery in terms hereof become impossible or delayed due to unforeseen or circumstance outside the reasonable control of HC Heat, it shall not constitute breach or failure to deliver on the part of HC Heat.

#### 7.4.2 **Failure to Take Delivery**

Should the Applicant fail to take delivery despite the notice in 7.4.1 above, the

Applicant shall be liable for all demurrage costs incurred by HC Heat in delivering the goods to the Applicant, including, but not limited to, the cost resulting from the Applicant's inability to offload the goods, storage and all related expenses incurred by HC Heat. Such expenses shall be settled prior to the Applicant taking subsequent delivery of the order. Should it become impossible, or delivery must be delayed such notice must be given to HC Heat no less than 24 hours before the date of delivery.

### 7.5 Inspection by Applicant

The Applicant shall inspect the goods as soon as possible upon delivery and at the premises of HC Heat. Regardless if the Applicant collects itself or makes use of a third party logistical service provider, the Applicant remains responsible for checking the order against the COA.

Once delivery was signed off, the Applicant shall have no claim against HC Heat for any discrepancy in quantity or condition of the goods. Should the Applicant wish to arrange for a virtual/electronic or other means of presence upon delivery, HC shall facilitate and agree thereto.

The Applicant warrants such inspection, specifications, number, and the condition of the goods against the order about to be taken delivery off subject to 7.7 below. Subject to 7.9, 7.10 and 7.11 below the Applicant may return goods all or any of the goods delivered but not in accordance with the order in regard to conditions or specification alternatively refuse to take delivery.

The defective order/delivery and all specifications, conditions and other relevant details shall be recorded in writing by the Applicant. HC Heat shall not be liable for any claim in respect of shortage of quantity or patent unless written notice of such claim is received by the Seller within 3 (three) days after the Applicant took delivery. Upon expiration of 3 days, the Applicant is deemed to waive any return or claim in respect of defects at delivery.

### 7.6 Offloading

Where HC Heat effects delivery other than at its own premises the delivery shall be effected by the employees and/or contractors of the Applicant. Delivery shall be deemed to done before offloading. Offloading shall be for and at the Applicant's sole risk. Should HC Heat's employees and or contractors assist in the offloading, which assistance shall be in HC Heat's sole discretion, all injury or damage of whatsoever nature caused as a result of or during the offloading, shall remain the sole risk of the Applicant. Any deviation from EXW shall be recorded in the COA and be:

FCS =Free Carrier

CPT =Carriage Paid To

CIP =Carriage and Insurance Paid

DPU = Delivery at Place Unloaded

DDP= Delivery Duty Paid

FAS =Free Alongside Ship

FOB =Free on Board

CFF =Cost and Freight

CIF =Cost Insurance Freight

All the above attracting the general and accepted commercial and practical application from time-to-time, at the time of acceptance of the quote.



## 7.7 Storage

Should the Applicant fail to take delivery of any goods in terms of the contract, without prejudice to any other rights, HC Heat shall be entitled at the Applicant's expense to store the goods on the Applicant's behalf, and the Applicant shall on demand be liable to pay HC Heat the reasonable costs incurred for such storage.

Should the Applicant fail to notify HC Heat of such failure and in terms of 7.4.2 upon arrival, delivery shall have been effected in terms of 7 HC Heat is not obligated to arrange or procure such storage and may do so in its sole discretion.

## 7.8 Price and Value Added Tax ("VAT")

HC Heat is a registered VAT vendor with registration number 4030195855. All prices quoted shall be excluding VAT. HC Heat shall add VAT over and above the quoted price. VAT shall be payable by the Applicant on all deposits and/or invoices and deliveries in terms of 7.8.

### 7.8.1 Payment

HC Heat shall determine the Payment Terms at Application stage. The Terms shall be granted in HC Heat's sole and reviewable discretion. Payment terms for purposes of this agreement includes: purchase orders, acceptable guarantees, upfront payments, C.O.D or any other terms as may be agreed. Regardless of the payment terms, **the standard terms of trade, delivery, orders, specifications, warranties, delivery, breach, and all other terms remains absolutely and irrevocably standard and non-variable.**

All Terms shall be calculated as calendar days. Payment shall become due within the number of days as indicated in section 5 of the Credit Application.

Due date shall be calculated from the date of Statement.

7.8.2 Non-Payment on due date shall prima facie constitute a breach of this Agreement. Interest shall be charged on all overdue amounts without prejudice to any other rights HC Heats have in terms of this Agreement or generally in law. Interest shall be calculated on the prime lending rate (as announced from time-to-time) plus 3% (three) percent per annum. Any additional charges in terms of this Agreement shall also bear interest if applicable.

7.8.3 Payment Arrangements granted to the Applicant having the effect of extending any Payment Term shall be made and confirmed at the time of placing the order and strictly in terms of 3.

HC Heat may consider and agree thereto in its sole discretion. If agreed, it shall

[www.hcgroup.co.za](http://www.hcgroup.co.za)

not constitute an ongoing arrangement nor have the effect of relaxing, altering, or novating the terms hereof. It shall be regarded as a "once-off" arrangement. HC Heat may request security.

7.9 **Ownership** of goods shall remain vested in HC Heat until the full price plus VAT, and if applicable additional charges as incurred in respect of such order has been paid in full.

7.9.1 Severability of Goods Under Ownership

The Applicant agrees for purposes of this credit agreement that all goods shall be deemed to remain movable and severable property notwithstanding that they have been fixed to movable or immovable property owned by the Applicant or by any third party whatsoever. This shall not apply if the goods form part or are affixed to a prior order as part of an order delivered by instalment in which case it shall be deemed as part of the complete order.

7.9.2 Severability from Immovable Property and Leased Premises

The provisions in 7.10.1 is not applicable to immovable property of which it shall remain severable save for instances where the immovable property forms part of the security provided by the Applicant or Surety in terms of this Agreement. Should the Applicant install such goods at a leased premises, the goods shall not form part of the Landlord's retention and the obligation to inform the landlord vests in the Applicant. Should HC Heat suspect that the landlord was not notified, HC Heat may inform the landlord or the manager of the premises.

7.10 **Warranties**

Warranties by HC Heat is not transferable. HC Heat warrants that the goods will perform in accordance with the performance figures and data specified in the COA and spec sheets provided that they are correctly installed and operated within the recommended limits of the manufacture's design and performance figures and subject to;

7.10.1 The warranty period in respect of any goods shall be 12 (twelve) months from the date of delivery.

Goods which are fitted with a refrigeration compressor will be covered by this warranty only when commissioned by HC Heat or a contractor pre-approved by HC Heat.

Any defect, replacement, or repairs after expiration of the warranty period shall be done on normal purchase order to HC Heat.

7.10.2 No warranty claim shall exceed original cost of equipment. Repair or replacement by HC Heat shall be free of charge to the Applicant on all goods which become defective during the warranty period as a result of defects in

design, materials or workmanship provided, however, that-

7.10.3 Notice, Inspection of Alleged Defects and Return

The Applicant shall notify HC Heat in writing on or before the warranty expiration date, on condition and upon notice return all allegedly defective goods to the Premises of HC Heat, carriage paid.

If for practical or commercial reasons, HC Heat may elect to inspect and investigate the alleged defect at the premises it is installed at upon the time of it being reported defective.

HC Heat shall not be liable for costs incurred in dismissing, refusing or fitting replacement parts or for any independent inspection replacement or repairs undertaken or commissioned by the Applicant.

#### 7.10.4 Repairs and replacements by HC Heat

Until liability under this warranty has been established, any replacement, component or associated services provided by HC Heat against the official order of the Applicant. Repairs and replacement in terms of his warranty shall be effected within a reasonable period of time relative to the particular circumstances, availability of parts, components and contractors, however HC Heat shall communicate such time frames and contingencies to the Applicant.

HC Heat shall be entitled to retain any defective goods which it replaces as its exclusive property and the Applicant shall not be entitled to any compensation in respect thereof.

#### 7.10.5 Voidable Warranty

HC Heat shall not be obligated under this warranty nor liable for damages if repairs, replacement, or modifications were done to any goods other than by its own employees. In the case of contractors, HC Heat must send him/her specifically for purposes of a warranty claim.

The warranty shall further not apply if any goods are operated with any equipment or components incompatible with the goods supplied, or the goods are not operated or maintained in accordance with the instructions or the manufacturer's guidelines.

HC Heat's liability under this warranty shall not extend to consequential damages, corrosion, deterioration, or any defect caused by normal wear and tear, neglect or misuse.

7.10.6 Defects and repairs on instalment deliveries. In circumstance of a defect in specification or number an order or part thereof, the Applicant shall not be entitled to withhold or off-set payment on future or uncompleted orders.

#### 7.11 **Breach**

Any failure by the Applicant to pay the full price plus VAT on or before the Payment Terms expire shall constitute a breach of this Agreement.

In such circumstance HC Heat shall give 5 (five) days' notice to rectify the breach failing which:

7.11.1 Interest shall be charged until the date of payment.

7.11.2 HC Heat may notify the Surety of the Applicant's failure and demand payment on the Applicants behalf in accordance with the Suretyships provisioned in section 4 of the Credit Application. HC Heat shall not be obligated to exhaust all legal remedies against the Applicant before demanding payment from the Surety.

7.11.3 HC Heat may proceed to institute legal action to enforce any of the rights in terms of this Agreement or in general. The Applicant shall be liable for the cost on an attorney-own client scale (including collection commission) in addition to any overdue amounts and interest and shall have no recourse or claim against HC Heat for any commercial damages that may arise from delayed delivery as a result of non-payments and / or reputational damage as a result of the overdue payment and HC Heat's election to enforce any of its rights in term of this Agreement.

7.11.4 HC Heat may cease production or withhold delivery of further and/or uncompleted orders, insist that a 50% deposit be paid on all new and uncompleted orders and further refuse delivery unless the full price plus VAT was paid. In such circumstance the Applicant may inspect the goods to verify that it is indeed completed.

7.11.5 HC Heat may elect to collect any goods already delivered of which the ownership still vests in HC Heat in terms of 7.9 above.

7.11.6 The parties may propose, negotiate, and agree any acceptable terms upon which the indebtedness may be settled.

7.11.7 Breach in General

Any Party shall be entitled to cancel the contract or any uncompleted part thereof without prejudice to any other rights which it may have in law or in terms hereof by written notice, should the other;

- a) be provisionally or finally sequestered, wound up or placed in business rescue, if a partnership being terminated;
- b) compromise or attempt to compromise generally with its creditors;
- c) commit any breach of any of the terms or conditions of the contract and fail to remedy such breach within 10 (ten) days of receipt of a notice calling upon it to do so.

7.11.8 Upon termination of the contract for any of the above reasons all amounts then owed by the Applicant to the HC Heat in terms of this Agreement shall become

due and payable immediately.

7.11.9 If all or any portion of the contract is cancelled by the Applicant without default on the part of HC Heat or without written notice, the Applicant shall be liable to the HC Heat for cancellation charges including but not limited to incurred costs and damages.



7.11.10 Should HC Heat be in default the Applicant may, without limiting any of its rights, first escalate the matter to the Authorised Representative and if after 5 days remains aggrieved, deliver a notice to HC Heat providing 10 business days to rectify the breach failing which the Applicant may cancel the agreement and claim all amounts already paid.

## 7.12 Miscellaneous

### 7.12.1 Termination

Save for circumstance of breach, this Agreement shall terminate upon notice by either Party and on condition that that all outstanding liabilities between the respective parties were settled.

### 7.12.2 FICA

As a pre-requisite to considering this application, the Applicant must submit all supporting documents as required by the Financial Intelligence Centre Act "FICA" as may be applicable to the entity and the sureties. A checklist is provided in 8 below.

### 7.12.3 Vis Major

HC Heat shall not be liable for any delay or any failure to perform any obligation in this Agreement due to any cause beyond its reasonable control, including, but not limited to strikes, lockouts or any other industrial action, sabotage, terror, riot, invasion, fire, explosion, storm, flood, subsidence, pandemic or other natural or physical disaster, delays by railway, impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport, or any act or policy of the authority local, provincial or national or other authority. Upon the occurrence of any event referred to above, the performance of such obligation shall be suspended for as long as the cause in the question continues to operate, provided always that the party affected by such cause shall promptly give notice to the other of such fact if reasonable possible.

### 7.12.4 Intellectual Property and Non-Disclosure

All drawings, plans, specifications, and data furnished by the Seller relating to the goods are confidential and shall remain the property of the Seller and shall be deemed to have been imparted by the trust to the Purchaser for the sole use of the Purchaser or person nominated by the Purchaser and approved by the Seller. Such drawings, plans, specifications, and data shall remain the exclusive property of the Seller and all intellectual property rights flowing therefore shall vest in the Seller.

7.12.5 Indemnity in respect of infringement of intellectual property rights

If the goods ordered by the Applicant are to be manufactured to any specification or design supplied by the Applicant indemnifies HC Heat against all claims which may be made against it and all liability as a result of infringement of any intellectual property rights vesting in any third party as a result of HC Heat's compliance with the Applicant's specification or design and against all costs incurred HC Heat in defending or any proceedings as result thereof.

7.12.6 Risk in the goods shall pass to the Applicant upon delivery thereof by HC Heat.

7.12.7 Insurance

In circumstance where HC Heat effects delivery other than at its premises the goods shall be insured in transit by HC Heat, against any loss or damage thereto. After delivery and until ownership passes, the Applicant shall, at its own expense, adequately insure and keep the goods adequately insured. The Applicant hereby cedes all rights in terms of any insurance policy effected in terms thereof to HC Heat.

7.12.8 Arbitration

In the event of a dispute other than payment terms arising between the Parties in respect of any matter provided for in, or arising out of, this Agreement may agree to refer the dispute for arbitration. Any arbitration arising out of this shall be referred by to the Arbitration Forum of South Africa and shall be conducted in accordance with the standard terms and conditions and summary procedure rules then applicable in that forum, such arbitration to take place at a duly designated location within Gauteng.

7.12.9 Applicable Law

The validity of this Agreement, its interpretations, the respective rights and obligations of the parties and all other matters arising in any way out of the contract or its performance, expiration or premature termination for any reason shall be determined in accordance with the laws of the Republic of South Africa.

7.12.10 Interpretation, for avoidance of doubt, in these conditions, the headings have been inserted for convenience only and shall not be used for nor assist or affect its interpretation. Unless the context requires otherwise words importing any one gender shall include the other genders, the singular shall include the plural and vice versa;

any reference to natural persons shall include legal persons and vice versa and consent means written consent.

7.13 **Special Conditions** (if applicable) and strictly in terms of 3 above

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## 8. FICA Requirements

### In the case of Natural Persons

#### 8.1 South African Citizens and Residents

##### Identification and verification

- Green barcoded identity document
- South African driver's licence; or
- South African passport

##### Proof of Residence

- a utility bill reflecting the name and residential address of the person;
- a bank statement from a registered Bank reflecting the name and residential address of the person
- a recent lease or rental agreement reflecting the name and residential address of the person;
- municipal rates and taxes invoice reflecting the name and residential address of the person;
- mortgage statement reflecting the name and residential address of the person;
- telephone or cellular account reflecting the name and residential address of the person;
- valid television licence reflecting the name and residential address of the person;
- recent long-term or short-term insurance policy document issued by an insurance company and reflecting the name and residential address of the person;
- recent motor vehicle license documentation reflecting the name and residential address of the person; or
- a statement of account issued by a retail store that reflects the residential address of the person.

#### 8.2 Foreign Nationals

##### Identification and verification

- In addition to a person's identity document a letter of confirmation from a person in authority (for example, from the relevant embassy) which confirms authenticity of

that person's identity document (passport) shall be required.

**Proof of Residence** shall be required similar to 8.1.

### 8.3 Legal Entities

#### 8.3.1 Private Companies & Closed Corporations

- Company statutory documents Certificate of Registration,
- Memorandum of Incorporation,
- Certificate of Name Change (if applicable) and signed by a director of the company;
- Proof of physical operating address, e.g., invoice, rates bill etc;
- Letter from the Auditors confirming shareholding;
- SARS issued document confirming Income Tax and VAT registration number.
- Directors' resolution appointing the authorised representative of the Company;
- Certified copy of the ID document of the authorised representative;
- Certified proof of residential address of the authorised person;

**In respect of any individual or entity holding 25% or more in the Company then Certified copy of their ID and proof of residence** and, if an entity all documents for that entity similar to 8.3.1 above.

#### 8.3.2 **Identification and Verification of Subsidiaries of Listed Companies**

Companies listed on the stock exchange are exempted. This Exemption does not apply to subsidiaries, whether wholly owned or not, of listed companies.

#### 8.3.3 Identification and verification of pension and provident funds, the authorized representative must provide the following:

- the name of the pension or provident fund;
- the address of the legal entity establishing the fund;
- the full names, date of birth and identity number or passport of the trustees
- number of the trustees or any other persons appointed to act on behalf of the pension and provident fund or who purports to establish a business relationship or to enter into this Agreement on behalf of the pension and
- provident fund; and
- the residential address of the trustees or any other persons appointed to act on behalf of the pension and provident fund or who purports to establish a business relationship

#### 8.4 **Identification and verification of "off the shelf" companies** shall be required in the same way they would identify and verify any other company.

#### 8.5 **Partnerships**

All partners in a partnership shall be identified and verified similar to natural persons in 8.1 above.



## 8.6 Identification of Trusts

The following documents are required to identify a trust:

- trust deed or other founding document;
- letter of authority from the Master of the High Court in South Africa or
- letter of authority from a competent trust registering
- authority in a foreign jurisdiction;
- trustees' resolution authorising person/s to act;
- personal details of each trustee, each beneficiary, the founder and the person/s authorised to act

Identification and verification of each trustee of a trust shall be done in accordance with

8.1 above.

## 8.7 Identification and Verification of Government Departments and Organs of State

Certain organs of state are incorporated as companies and registered with the Registrar of Companies to conduct business and shall be identified as companies in 8.3 above. In other instances, Government institutions are constituted as legal persons by statute. The following shall be required the full name, date of birth and identity number in respect of individuals acting on behalf of the relevant organs of state will be verified in accordance with 8.3.1 and 8.3.3 above.