

BITZER US Inc.

Terms & Conditions

1. **AGREEMENT:** All orders shall be subject to and expressly conditioned upon the terms and conditions of sale set forth herein (hereafter the "Terms and Conditions"). Buyer's purchase of any and all products or services from BITZER US Inc. (hereafter referred to as "Seller") shall be deemed to be Buyer's assent and agreement to the Terms and Conditions. In the event that any purchase order, acknowledgment or other form of Buyer includes terms and conditions which conflict with these Terms and Conditions, the Terms and Conditions of this document shall prevail.
2. **PAYMENT TERMS:** Net 30 from date of invoice for accounts with approved credit unless otherwise specified. If no credit line is established, Seller requires "cash with order." Checks or Wire Transfers are preferred. Past due accounts will be placed on credit hold until current.
3. **QUOTATIONS:** Seller's quotations (hereafter "Quotations") are valid for 30 days. With respect to those items not of Seller's manufacture, Seller will pass on the same escalation provisions as are made a part of Seller's purchase order for such items and Buyer hereby agrees to be bound by such escalation provisions. Aftermarket quotes and orders for compressors will include core deposits as set forth by the Seller in Seller's Quotation. The core deposit charge will appear as a separate line-item amount. Buyer is responsible for the return freight of cores. When the core is returned, the core deposit will be credited and the core becomes the property of the Seller.
4. **TAXES:** Any tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority on or measured by the transaction between Seller and Buyer shall be paid by Buyer in addition to any amount quoted or invoiced. In the event Seller is required to pay any such tax, fee, interest or charge, Buyer shall reimburse Seller on demand.
5. **FREIGHT:** Unless otherwise specified by Seller, all shipments shall be F.O.B. Seller's dock. Title to and risk of loss of products pass to Buyer upon delivery by Seller to the carrier. Seller shall assess a nominal handling and administrative fee on each shipment.
6. **SHIPMENTS:** Seller shall have the right to deliver any portion of the products included in an order and to bill Buyer for such delivered products. Buyer agrees to pay for the same in accordance with the terms of payment of the order as set forth in Section 2 above.
7. **SHIPPING DATES:** Following Seller's receipt of Buyer's purchase order, Seller shall issue an order acknowledgement. Ship dates, as stated in Seller's order acknowledgements, are estimates and subject to change. Unless otherwise specifically agreed to in writing, Seller does not guarantee a particular date for shipment or delivery of goods quoted. Seller shall be compensated for any and all extra costs and expenses incurred by delays attributable to Buyer. Seller will make every effort to fill orders within the time stated, but under no circumstances will Seller be responsible for any damages arising out of or owing to any delays in delivery. Seller is under no obligation to pay air freight or expedite fees on late shipments. Delay in delivery shall not relieve Buyer of its obligation to accept remaining deliveries.
8. **COMPRESSOR AND PRESSURE VESSEL WARRANTY:** Seller warrants the semi-hermetic reciprocating compressors, screw compressors, scroll compressors and pressure vessels (e.g. evaporators, condensers, receivers, etc.) (PVs) manufactured by Bitzer SE, Bitzer US Inc., or Bitzer Scroll Inc. and sold by Seller to be free from defects in material and workmanship under normal use and regular service and maintenance for a period ending on the earlier of 12 months from the date of original installation or 18 months from the date of manufacture of the product. The Buyer's or End-User's exclusive remedy and Seller's exclusive liability under this warranty shall be limited, at Seller's option, to (i) replacement of the same with a new or remanufactured compressor, PV, part (e.g. valve plate, etc.), or component, or (ii) issuance of a credit for the original purchase price. Any claim made under this warranty is conditioned upon return of the failed compressor, PV, part, or component to Seller within 30 days from date of failure and Seller's inspection of the returned product and determination that there was a defect covered by this warranty. Seller may, at its option, issue a reduced credit for any product returned later than 30 days after failure. **THIS EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXCLUDED. THIS WARRANTY DOES NOT INCLUDE LABOR COSTS.** Labor, material and other expenses related to the removal, replacement and transportation of defective compressor, PV, parts or components are the Buyer's or End-User's responsibility. The warranty stated above is limited to the Buyer or original End User of the compressor, PV, or Seller-manufactured parts or components; and with respect to compressors covers only the basic compressor and the Seller-manufactured compressor components and accessories, such as crankcase heaters, pressure switches, external unloaders, flywheels, couplings, and mufflers. For any claims outside the continental United States (e.g. the Caribbean or Hawaii), Seller's only obligation is to ship replacement compressors, PVs, etc. to a port located in the continental U.S. Parts incorporated in the Seller's products but not of Seller's own manufacture will carry only the warranty of their manufacturer, if any; Seller will endeavor to secure for Buyer the benefits of any such warranty, if inspection proves such parts to be defective. This warranty shall not apply to compressors, PVs, parts or components improperly applied, installed or operated, or to those which have been modified, subject to abuse, misuse, negligence, or improper repair, service or maintenance. Also, this warranty shall not apply to compressors or PVs operated with refrigerants not approved by Seller or to a PV that exchanges heat between two fluids in an application where one fluid's temperature or saturation temperature is allowed to be less than the freezing point of the other fluid. All compressors, PVs, parts or components shall be returned to Seller, freight prepaid, for inspection, and Seller reserves the right to deny any claim for a remedy under this warranty if after inspection of the claim, Seller determines that the compressor, PV, part or component was not found to be defective. Compressors, PVs, and parts or components replaced shall have the same warranty as set forth herein, limited however, to the time remaining for the warranty period which applied to the original compressor, PV, part or component. All compressors, PVs, parts and components returned for which a credit is given under this warranty shall become the property of Seller. Transport compressors require a discharge check valve for warranty consideration. The omission of this may void the warranty.
9. **COMPRESSOR PACKAGE AND VALUE ADD WARRANTY:** Compressor Packages (defined exclusively as products that include "ACP" and "SCP" in the model number) and value add products (e.g. compressor/motor assemblies; compressors with added piping, frame, and/or PVs; PV packages; other compressor packages not defined as Compressor Packages above; and condensing units) include those products with components and features above and beyond Seller's standard compressors and PVs. Compressor Packages and value add products are collectively referred to as "Other Products" herein. Seller warrants Compressor Packages of Seller manufacture and sold by Seller to be free from defects in material and workmanship under normal use and regular service and maintenance for a period ending on the earlier of 24 months from the date of original installation or 30 months from the date of manufacture of the product. Seller warrants value add products of Seller manufacture and sold by Seller to be free from defects in material and workmanship under normal use and regular service and maintenance for a period ending on the earlier of 12 months from the date of original installation or 18 months from the date of manufacture of the product. The warranty is contingent upon Buyer installing Other Products to industry and Seller standards, using authorized Seller personnel to commission Other Products (where applicable), lubricating Other Products with genuine Seller refrigeration oil or Seller approved alternate refrigeration oil (where applicable), Other Products being controlled and protected by a Seller microprocessor/controller or Seller approved alternate microprocessor/controller (where applicable), and all maintenance and record logs for Other Products being kept by Buyer in accordance with Seller suggested maintenance. The Buyer's or End-User's exclusive remedy and Seller's exclusive liability under this warranty shall be limited, at Seller's option, to (i) replacement of the same with a new or remanufactured Other Product (or part or component thereof) or (ii) issuance of a credit for the original purchase price. Any claim made under this warranty is conditioned upon return of the failed Other Product to Seller within 30 days from date of failure and Seller's inspection of the returned product and determination that there was a defect covered by this warranty. Seller may, at its option, issue a reduced credit for any product returned later than 30 days after failure. **THIS EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXCLUDED. THIS WARRANTY DOES NOT INCLUDE LABOR COSTS.** Labor, material and other expenses related to the removal, replacement and transportation of defective Other Products are the Buyer's or End-User's responsibility. The warranty stated above is limited to the Buyer or original End User of Other Products, and with respect to Seller-manufactured compressors that are components of Other Products covers only the basic compressor and the Seller-manufactured compressor components and accessories, such as crankcase heaters, pressure switches, external unloaders, flywheels, couplings, and mufflers. For any claims outside the continental United States (e.g. the Caribbean or Hawaii), Seller's only obligation is to ship replacement Other Products to a port located in the continental U.S. Parts incorporated in Seller's Other Products but not of Seller's own manufacture will carry only the warranty of their manufacturer, if any; Seller will endeavor to secure for Buyer the benefits of any such warranty if inspection proves such parts to be defective, however, it is the Buyer's responsibility to follow the original manufacturer's warranty process. This warranty shall not apply to Other Products improperly applied, installed or operated, overloaded, or to those which have been modified, subject to abuse, misuse, negligence, or improper repair, service or maintenance. Also, this warranty shall not apply to Other Products' normal wear and tear, corrosion, or operation with refrigerants not approved by Seller or to PVs that are components of Other Products where a PV exchanges heat between two fluids in an application and one fluid's temperature or saturation temperature is allowed to be less than the freezing point of the other fluid. All Other Products shall be returned to Seller, freight prepaid, for inspection, and Seller reserves the right to deny any claim for a remedy under this warranty if after inspection of the claim, Seller determines that such Other Product was not found to be defective. Seller may, at its discretion, elect to perform its inspection at the Other Product's installation site with the cost of such inspection being the full responsibility of Buyer. Other Products replaced shall have the same warranty as set forth herein, limited however, to the time remaining for the warranty period which applied to the original Other Product. Other Products returned for which a credit is given under this warranty shall become the property of Seller.
10. **LIMITATION OF LIABILITY:** Seller's maximum liability for any reason shall consist of the refunding of moneys paid subject to Seller's right of removal and return of equipment to Seller. Seller shall not be liable for any claim for bodily injury, including death, or damage to property caused by any defects in any products, including parts supplied by third-party manufacturers, to the extent such loss or injury is caused by, arises from or is attributable to (i) misuse, neglect, or abuse of such products or parts thereof by Buyer or any third party; (ii) improper or inadequate operation, maintenance or repair of such products or parts thereof by Buyer or any third party, or (iii) modification of such products or parts thereof by Buyer or any third party in a manner not authorized by Seller or the parts manufacturer. **SELLER SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOSSES FROM ANY CAUSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, COMMERCIAL PROFITS, OR CUSTOMER GOODWILL OR ANY OTHER CLAIMS BASED ON CONTRACT OR TORT.**
11. **PATENTS:** Seller shall indemnify Buyer against liability for infringement of any U.S. Letters Patent arising out of the manufacture, sale, or use of Seller's products delivered hereunder unless the infringement arises because of (i) compliance with Buyer's specifications, or (ii) the use of such products in an infringing process or combination and such infringement would not arise from the use of such products alone. This indemnification is conditioned upon Buyer giving Seller prompt notice of, and the full right to defend and settle, any such claim or suit, and Seller's right to modify such products so as to make them non-infringing without materially departing from the requirements of Buyer's purchase order.
12. **ORDER CANCELLATION:** Orders may be cancelled by Buyer only with the consent of Seller and upon payment of reasonable cancellation charges. Such charges take into account costs and expenses thereto incurred, purchase or contract commitments made by Seller and all other losses due to such cancellations including a reasonable profit.
13. **RETURNS:** Products may not be returned without Seller's prior written consent. Seller may, however, in its sole discretion, refuse to authorize, or place conditions on, any request for return. Any product returned with Seller's consent must be shipped freight prepaid and is subject to a 25% restocking fee. The cost of any additional charges to return product to marketable condition will also be deducted from Buyer's return credit.
14. **ORDER ACCEPTANCE:** No order pursuant to Seller's Quotation shall be binding until duly accepted by an authorized representative of Seller. No person has the authority to make or claim any representation, promise or condition which is not expressed herein. The minimum order is \$50. Prices may change without notice.
15. **CLAIMS:** Any claim(s) by Buyer arising from the performance or nonperformance of Seller shall be brought within thirty (30) days from the date such claim arose.
16. **FORCE MAJURE:** Seller shall be excused from and under no circumstances shall Seller be liable for any loss or damage arising from delays in performance due to fire, strikes, labor matters, government regulations, acts of the elements, transportation, failure to receive materials, or causes of a like or different nature reasonably beyond its control in the conduct of its business.
17. **ASSIGNMENT:** Any assignment of this agreement by Buyer, in whole or in part, without seller's prior written consent is void.
18. **JURISDICTION:** This agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of Georgia. Resolution of all disputes arising pursuant to this agreement shall be exclusively in the Superior Court of Hall County, Georgia and Buyer hereby submits to the jurisdiction of the Superior Court of Hall County, Georgia and agrees that venue is proper in such Court and hereby waives any jurisdictional or venue rights it may have otherwise. Provided, however, that if the claim or dispute involves questions of federal law, then jurisdiction and venue shall be in the United States District Court, Northern District of Georgia, Gainesville Division. Diversity of parties shall not be considered a federal question under this agreement. In the event of a dispute under this agreement, the prevailing party in such dispute shall be entitled to reimbursement from the non-prevailing party for all costs, expenses, and attorney's fees incurred in connection with such dispute.
19. **SEVERABILITY:** Any legally unenforceable provision may be severed from these Terms and Conditions, and the remaining Terms and Conditions will be enforced as a whole as if such provision had not been inserted herein.
20. **APPLICATION RESPONSIBILITY:** Refrigeration and air conditioning applications are complex and require highly trained engineers and technicians to properly size, apply and install compressors, PVs, Other Products, and related equipment. The Seller takes no responsibility for the suitability of such applications or installations, and Buyer shall be solely responsible for the suitability of such applications and for all installations.
21. **MISCELLANEOUS:** These Terms and Conditions constitute the entire agreement between Buyer and Seller. No change, modification or waiver of, and no usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement, these Terms and Conditions shall be binding upon Seller unless made in writing and signed by Seller. No modification shall be effected by Seller's receipt or acceptance of Buyer's purchase orders, shipping instruction forms or other documentation containing terms at variance with or in addition to those set forth herein, all of which are rejected by Seller. Further, the United Nations Convention on the International Sale of Goods (1980) (as amended from time to time) shall not apply to this agreement or any transactions relating thereto.