

Hong Kong Air-conditioning Parts Centre - Terms and Conditions of Sales

These general terms and conditions govern all sales made by Hong Kong Air-conditioning Parts Centre ("APC"). They shall take precedence over any terms and conditions proposed by the Buyer. These terms and conditions may be modified only with express, written agreement of APC, given by one of its duly authorized employee.

1. **Offer and Acceptance**

Unless otherwise expressly stated, the quotation is valid for thirty (30) days from its date, and is made subject to the written acceptance by APC. The prices cited are merely indicative and may be updated at any time and without prior notice. Acceptance by the Buyer of goods shipped by APC on the order will in any event constitute acceptance without reserve of these terms and conditions of sale. Acceptance of orders by APC shall be made solely by means of a formal "Order Acknowledgment" issued by APC.
2. **Performance**

APC shall be obligated to furnish only the equipment described in APC's submittal data (if any) and as described on the quotation or the order acknowledgment or in the documents annexed hereto. APC shall not be responsible for total or partial non performance due to events of force majeure, including severe weather, total or partial strikes, riots, accidents, fires, explosions, the inability to procure materials from the usual sources of supply or at the usual prices, shortages of labour interruptions or delays in means of transportation, embargo, requisition or order of any government or military authority relating to the use or, destination of materials or of the finished produce, acts of third parties, including the Buyer, or upon any like or unlike cause beyond the control of APC, even where the circumstances were not totally unforeseeable and unavoidable. Upon the occurrence of any such events as aforesaid, APC may delay performance or, as its option, renegotiate prices and terms and conditions of sale with the Buyer. If the Buyer and APC are unable to agree on revised prices or terms, the order shall be cancelled without any liability being incurred by APC.
3. **Specifications**

Where any specifications, data, drawings or information are to be supplied by the Buyer then the same shall be supplied within such reasonable time as may be necessary to enable APC to complete delivery or installation within the period named and Buyer will in any event supply the same on demand. APC shall be responsible for compliance of the equipment with technical requirements or standards described in the catalogues where the equipment is to be used only when specific mention of the proposed use and destination of the equipment and of such requirements or standards is made in the order and order acknowledgment, and when a copy of such provisions is furnished to APC prior to the acceptance of the order.
4. **Imports, Taxes, Freight and Other Costs**

Customs duties, turnover taxes and other taxes, as well as all freight and insurance costs and any incidental cost shall be borne by the Buyer. If by express agreement, however, APC agrees to include any such taxes, or costs in its contractual price, any increase or new charge which might occur between the date of acceptance of the order and the date of delivery shall be borne by the Buyer. Any increase in the cost of the imported equipment arising, among other things, from changes in currency parities shall also be borne by the Buyer.
5. **Insured Transport Damages**

When APC insured the shipment, any transport damages, losses or shortages are to be notified immediately by the consignee to the carrier and APC. Failure to do so may result in the loss of the benefit of the transport insurance cover, in which case all possible claims for loss or damage are excluded.
6. **Warranty and Liability**

APC warrants for a period of twelve (12) months for all Trane equipment (including Trane parts used in Trane equipment) from the date of delivery unless otherwise expressly stated, that the goods sold:

 - a) is free from defects of materials and workmanship, and
 - b) has the capacity and ratings set forth in equipment catalogues and bulletins, subject to normal test tolerances

The warranty is limited to the above, it shall be null and void in any other case, including (but not limited to)

 - improper storage by the Buyer or by a third party;
 - installation not done in accordance with equipment specifications and with recognized and accepted engineering standards;
 - modification of the equipment by the Buyer or by a third party, without prior written approval from APC;
 - faulty maintenance or utilization of the equipment.

No warranty is made against corrosion or with respect to suitability of substitute materials used because of government regulations and no warranty is provided for other parts unless otherwise expressly stated. The Buyer shall inform APC in writing of any flaw, defect or deficiency in the equipment within two weeks of the time any such flaw, defect or deficiency becomes apparent, in default of which the Buyer forfeits the right to invoke this warranty.

The obligations and liabilities of APC under this warranty are limited to furnishing "ex works" (Incoterms 2010) replacement equipment for, at the option of APC, (parts therefore) for all the equipment sold not conforming to this warranty and which have been returned to APC or, at its choice, to repairing of defective products. In no event shall APC be obligated to pay for the cost of lost of refrigerant. Freight and return costs of defective, repaired or replacement equipment or parts are at the Buyer's expense. Likewise, when the equipment is repaired on site, labour costs, as well as travel and residence expenses incurred by APC's agents are borne by the Buyer.

No liability whatever shall attach to APC until the products have been paid for and the said liability shall be limited to the purchase price of the components shown to be defective. APC declines all liability for any accidents, damages or losses which may be caused directly or indirectly by the equipment delivered by it or the functioning or non-functioning of such equipment. Any further warranty must be issued in writing by APC. The warranty and liability set forth in this paragraph are in lieu of all other warranties and liabilities expressed or implied. In no event shall APC be liable for any incidental or consequential damages.

For other non-Trane goods, there is no warranty unless otherwise expressly stated.
7. **Delivery**

Unless otherwise expressly agreed to by an authorized employee of APC, delivery dates given shall be merely indicative. In the event of APC being prevented by any reason beyond its control from delivering the equipment by the due date, and upon the Buyer's agreement, APC shall store and, if needed handle said equipment at the Buyer's risks and expense.
8. **Testing and Commissioning of Equipment**

Testing and commissioning of any equipment sold by APC has to be carried out by a service agent authorized by APC.
9. **Risks - Title**

The Buyer shall assume all risks relating to the equipment sold and all the costs relating thereto from the date of delivery. However, transfer of title or ownership shall be delayed even the equipment resold by the Buyer until APC has been paid in full.
10. **Cancellation**

APC shall in no event be bound to accept cancellation of an order by the Buyer in the event that all or any portion of the order is cancelled by the Buyer without default on the part of APC and that APC accepts such cancellation, the Buyer shall be liable to APC for cancellation charges, including but not limited to APC incurred costs and such profit as was anticipated.
11. **Payment**

If payment of any sum due under this Contract by the Buyer is not made within or on 30 days of the date of demand ("the overdue date") to APC, then the Buyer will pay (both before and after judgment) interest on the outstanding sums from the overdue date until the date payment in full is received by APC at the rate of 2% over the prime rate from time to time of the Hongkong & Shanghai Banking Corporation Ltd.
12. **Rights of Third Parties**

A person who is not party to this agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Ordinance (CAP. 623).
13. **Jurisdiction**

These conditions shall be governed and construed in accordance with the laws of Hong Kong Special Administrative Region and both parties agree to submit to the non-exclusive jurisdiction of the courts of Hong Kong Special Administrative Region.