

# Clauger Refrigeración Iberia, S.A.

## GENERAL CONDITIONS OF PURCHASE – FORM 2

### 1. Definitions and Interpretation:

**Goods** mean all materials, machinery, equipment, documents, spare parts, software and other tangible or similar items to be provided by Supplier under the Purchase Order.

**Services** mean all services, guarantees, insurances and other intangible or similar items to be provided by Supplier under the Purchase Order.

**Supplies** mean Goods and Services.

**Owner** means the person, entity or government agency owning the plant for which the Supplies are intended.

**Customer** means the Clauger Company issuing the Purchase Order.

**Supplier** means the person or entity to which the Purchase Order is issued.

**Purchase Order** means Customer's purchase order or other form of contract between Supplier and Customer, including these General Conditions of Purchase and all attached or referenced documents.

**Delivery Date(s)** means the date(s) of delivery for the relevant Goods or Services as stated in the Purchase Order, as such may be amended pursuant to § 26.

References to "including" shall mean "including without limitation". Words importing the singular shall include plural and vice versa where the context so requires.

2. Application: These General Conditions of Purchase shall apply to all Purchase Orders issued by Customer to Supplier.

3. Entire Agreement and Priority: Supplier agrees that the Purchase Order contains the entire agreement of the parties and supersedes all prior agreements and understandings between the parties with respect to the subject matter of the Purchase Order. Customer does not agree to, and expressly objects to and rejects, any different or additional terms or conditions set forth by Supplier in its acceptance of the Purchase Order or any other document or communication of Supplier made in connection with or relating to the Purchase Order, except to the extent expressly incorporated into the Purchase Order. Supplier's acceptance of the Purchase Order shall be strictly limited to the terms and conditions included in the Purchase Order. Supplier agrees that it has not relied on any representation or warranty of Customer not expressly set forth in the Purchase Order. In case of any conflict or inconsistency, the Purchase Order documents shall prevail in the following order: the Purchase Order, these General Conditions of Purchase, any other documents of Customer attached to or referenced in the Purchase Order, and any documents of Supplier attached to or referenced in the Purchase Order.

The Purchase Order shall enter into full force and effect when the Purchase Order itself has been signed by Customer and Supplier which must take place at the latest five (5) working days after Supplier's receipt.

4. Delivery: Delivery of the Supplies must be made within each of the applicable Delivery Dates stated in the Purchase Order. Time is of the essence. Supplier will immediately notify Customer of any actual or potential delay to the performance of the Purchase Order. Any nonconforming or incomplete supply (including incomplete documentation) shall not be deemed delivered unless and until fully remedied. At the request of Customer, Supplier will deliver Goods by the most expedient delivery method if the Delivery Date(s) are endangered. Early delivery or partial shipment shall be allowed solely to the extent stated in the Purchase Order.

If conforming and complete performance cannot be made by the relevant Delivery Date for reasons attributable to the fault of Supplier (and not that solely of Customer or Force Majeure), Customer reserves the right at any time to impose upon Supplier liquidated damages in an amount of 1% of the Purchase Order price, or such other amount as is stipulated in the Purchase Order, of the price for each week of delay until the day of actual delivery or performance. The liquidated damages shall not exceed 10% of the price unless otherwise stipulated in the Purchase Order. If Customer is entitled to the maximum delay liquidated damages and the Supplies are still not delivered, Customer shall be entitled to cancel the Purchase Order by giving written notice thereof to Supplier. The foregoing remedies shall be without prejudice to any other remedies available to Customer according to applicable law and the Purchase Order.

Unless otherwise stipulated in the Purchase Order the most recent version of Incoterms shall apply to Supplier's supply and the terms of delivery shall be FCA.

Supplier shall be responsible for obtaining from Customer all necessary shipping instructions in order to ensure that delivery can take place as agreed.

5. Modification, Change Orders and Waiver: The Purchase Order may not be modified and no change order shall be effective unless signed in writing by authorised representative of Customer. Customer shall not be deemed to have waived any provision of the Purchase Order except where having done so expressly in writing.

Customer may initiate change orders at any time either by instruction or by request to Supplier to submit a proposal.

If Customer requests a proposal prior to instructing a change order, Supplier shall respond in writing as soon as practicable, however, not later than five

(5) working days after Customer's request, stating how the change order can be carried out and any adjustments that need to be made to the Purchase Order, including price and Delivery Date(s). Customer shall respond with approval, disapproval or comments. If Customer does not obtain a written proposal from Supplier detailing any adverse impacts on Supplier's cost or the stipulated deadlines or written notice from Supplier within ten (10) working days after Supplier's receipt of any change order request, Supplier shall not be entitled to any adjustment in price or the stipulated Delivery Date(s).

Upon instructing or approving a change order proposal, Customer shall determine any adjustments to the Purchase Order including Delivery Date(s). The amount to be added or deducted from the Purchase Order price, shall, if not the subject of a quotation from Supplier which has been accepted by Customer prior to the change order having been ordered, be determined by Customer in accordance with the rates specified in the schedule of prices enclosed to the Purchase Order, if any. Where rates are not contained in the said schedule or are not applicable then the amount shall be such sums as are in all the circumstances reasonable.

6. Quality, Inspection and Testing: Supplier shall maintain a quality control system for the Supplies. Supplier shall comply with Customer's quality assurance requirements, as such may be amended. All Supplies shall be subject to testing and inspection by Customer, or at Customer's option by Owner or its representatives, at all reasonable times and places, including inspection at Supplier's facilities and inspection before, during and after manufacture. If Customer does not accept any Goods or Services, Customer shall notify Supplier of such rejection, and § 23 below shall apply.

7. Language: All documentation shall be in the language specified in the Purchase Order. If no language is specified in the Purchase Order, the applicable language for all documentation and other communications shall be English.

8. Drawings and Other Documentation: Supplier shall provide all documentation stipulated in the Purchase Order according to the requirements thereof, including any requirements as to content, form, approval and Delivery Date(s). Supplier will submit any documentation in electronic form at no extra cost if requested by Customer.

Customer and any third party shall be entitled to copy and use the documents supplied by Supplier free of charge for its own purposes.

Customer's approval of or comments regarding Supplier's drawings, calculations and technical documents shall create no responsibility or liability on the part of Customer and shall not excuse Supplier from any obligation or duty under the Purchase Order.

9. Packing, Crating and Cartage: The Goods shall be packed in accordance with the packing specifications and instructions of Customer. Protective measures shall be taken to prevent damage from moisture, rain, shock, etc., according to the characteristics and requirements of the Goods so as to ensure their safe arrival at the site without deterioration from rust, corrosion etc. All wooden packing materials including but not limited to pallets shall comply with ISPM15. Customer shall be entitled to reject Goods that are damaged or polluted on delivery or that are not packed, labelled or provided with delivery documents as stipulated in the Purchase Order, without prejudice to Customer's right to claim damages. No charges will be allowed for freight, packing, boxing, crating or cartage. Supplier shall give Customer at least ten (10) days prior written notice of any shipment.

10. Spare Parts: Supplier shall ensure that it can supply spare parts for the Goods for a period of at least ten (10) years after the date of delivery. Supplier shall, upon Customer's request, send Customer a complete and detailed offer for spare parts including prices for each separate item within thirty (30) days from the date of Customer's request. Supplier shall, upon Customer's request, send an offer for individual spare parts within three (3) days from the date of Customer's request. Supplier shall maintain a buffer stock of parts adequate to manufacture and deliver spare parts no later than three (3) days following a Purchase Order from Customer.

11. Export Licenses and Conformity with EU Directives: Supplier shall comply with all applicable import and export control, customs, foreign trade and other similar laws, regulations and requirements ("Foreign Trade Regulations") and shall ensure that all import and export licences or permits required for the performance of its obligations shall be obtained. Supplier shall promptly advise Customer in writing of any information and data required by Customer to comply with all Foreign Trade Regulations.

Supplier shall provide Customer with a declaration of conformity with all applicable EU directives and shall CE mark all Goods.

12. Price and Payment: The price stated in the Purchase Order is a firm lump-sum price except as set forth in the Purchase Order. The price shall not be adjusted for any changes in the cost of labour, materials, duties, taxes or any

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other matter. Supplier shall pay all duties, taxes and other assessments arising from its obligations under the Purchase Order and in connection with Customer's payment of the price.

Supplier shall submit an invoice in duplicate for all amounts due. Invoices shall contain a description of the supply and the Purchase Order number. Unless otherwise stated in the Purchase Order, all invoices are payable net current month of receipt and acceptance of Supplies by Customer plus sixty-three (63) days. Payment is conditional upon that the supplied delivery complies in full with the Purchase Order, including all required documentation.

13. **Bank Guarantees:** Upon Customer's request, any advance payment to be made by Customer shall be secured by a bank guarantee in the amount of the advance payment and Supplier shall provide Customer with a 10% performance guarantee. Any bank guarantee to be provided by Supplier shall be irrevocable, unconditional and on demand, received not later than fifteen (15) days after date of the Purchase Order and in form and substance acceptable to Customer. The advance payment guarantee shall expire upon Customer's acceptance of all Supplies. The performance guarantee shall expire upon expiration of the guarantee period.

14. **Guarantees:** Supplier represents and guarantees each of the following:

- i. that Supplier and the Supplies will comply with all applicable laws, directives, regulations, ordinances and other governmental requirements relevant to the Purchase Order;
- ii. that the Supplies will strictly conform with the specifications, drawings, descriptions and other requirements of the Purchase Order;
- iii. that Supplier is fully qualified and capable of providing the Supplies;
- iv. that all Goods will be new, transferred with good title free and clear of all encumbrances, liens and other security interests of any kind, merchantable and will be free of defects in design, material and workmanship;
- v. that the Supplies will be fit for the intended purposes and will meet all functional specifications, including any process and/or performance standards, of the Purchase Order;
- vi. that the Services shall be performed with such care, skill and diligence that at a minimum can be expected of experienced, international and well-reputed firms providing similar services within the industry and that additionally may be required in order for Supplier to fulfil the requirements of the Purchase Order; and
- vii. that where the Goods or Services incorporate or contain chemicals or dangerous hazardous goods or substances, these shall be provided with written and detailed specifications of the composition and characteristics of such goods or substances and of all laws, regulations and other requirements relating to such goods or substances in order to enable Customer to transport, store, process, use and dispose of such Goods properly and in a safe manner.

15. **Guarantee Period:** Supplier's guarantees according to § 14 shall, except with respect to software provided by Supplier, be valid from the date of delivery of the Goods up to and including the date that is twenty-four (24) months after the Goods have been placed into operation and accepted by Owner or thirty-six (36) months after delivery of the Goods, whichever is latest. With respect to software the guarantees according to § 14 shall be valid sixty (60) months from the date after the software is taken into operation by Owner. The guarantee period for any portion of the Goods that is repaired or replaced within said period (or any extended period) shall be the remaining period for the original Supply or a period of time equal to twenty-four (24) months from the date of completion of the repair or replacement, whichever is longer. Without any limitation of the foregoing, Supplier shall remedy all nonconformities including defects due to Supplier's intentional misconduct or gross negligence regardless of when they occur.

Customer shall, no later than thirty (30) days after expiration of the guarantee period, notify Supplier in writing of any breach of the guarantees that is discovered during the guarantee period. Upon receipt of timely notification, Supplier shall at its own cost and expense immediately remedy such breach, including re-performing, replacing or repairing any defective or non-conforming Supplies. Further, Supplier shall immediately notify Customer of any nonconformity including defect of which it becomes aware regardless of whether it receives any notice from Customer. Supplier shall be responsible for any costs of dismantling and reassembly of any Goods to the extent necessary to effect the remedy, as well as any related transportation and insurance costs and taxes, duties and other levies. Where the Supplies are integrated with other supplies comprising a total project being supplied by Customer, Supplier shall be responsible for any costs of remedying other portion of the total project adversely impacted by any defect or nonconformity of the Supplies. If Supplier is required to perform any repair or replacement at the site, Supplier shall comply with all instructions of Customer regarding the site.

Customer's rights and remedies under the foregoing guarantee provisions shall be in addition to any provided by applicable law or the Purchase Order.

16. **Insurance, Title and Risk:** Supplier shall insure the Goods against any loss or damage, including transportation loss or damage, until the risk of loss to the Goods has been transferred to Customer. Further, Supplier shall obtain and maintain at all relevant times commercial general liability insurance (including product liability and completed operations coverage) and, where applicable, automobile liability insurance. Each such insurance shall

be in an amount not less than EUR 2,000,000 for any one occurrence. Each such insurance shall name Customer as additional insured.

Title to Goods shall transfer from Supplier to Customer at the date for shipment or the date Supplier is paid, whichever occurs first.

Notwithstanding any Incoterm to the contrary, Supplier shall have the risk of loss until the Goods have been delivered and accepted by Customer.

17. **Supplier's Employees:** Where it is necessary for the employees or representatives of Supplier to go upon the premises of Customer or Owner, Supplier shall have full responsibility and liability for such employees and representatives while on said premises, including their compliance with all applicable government regulations and with all plant rules and regulations, including workmen's compensation, safety, health and fire hazards.

18. **Customer's Property:** All materials, tools and equipment furnished to Supplier by Customer or paid by Customer shall remain the property of Customer and be used for Customer's Purchase Order only. Such property shall be plainly identified by Supplier as Customer's property, shall be safely stored and not used except in filling Customer's order, and shall be maintained in good condition and properly insured at Supplier's expense. If any items provided by Customer are processed, converted or transformed by Supplier to form a new movable product Customer acquires title to and ownership in the new asset. It is understood and agreed that Supplier assigns and transfers to Customer title to such product. All plans, specifications and drawings (including all copies thereof) and all of Customer's other property shall be returned to Customer promptly after the Supplies have been furnished.

Supplier shall upon receipt inspect the quantity, quality and condition of the materials, tools and equipment provided by Customer. Shortcomings shall be notified to Customer without delay. Any shortcomings established at a later date shall be Supplier's responsibility.

19. **Confidential Information:** This provision shall apply unless the parties have entered into a separate confidentiality agreement intended to cover the subject matter of the Purchase Order. All drawings, specifications and other documentation and information of any kind or form disclosed directly or indirectly by a party (the "Disclosing Party") to the other party (the "Receiving Party") or observed by a party at the facilities of the other party are the confidential property of the Disclosing Party. The parties shall not disclose such information to their employees except on a need-to-know basis to enable them to perform the obligations of the Receiving Party under this Purchase Order. The Receiving Party shall not use such information for any project or purpose other than that which is the subject of the Purchase Order, shall take all reasonable steps to maintain the confidentiality of all such information, and shall not disclose such information to any third party without the Disclosing Party's prior written consent. Notwithstanding the foregoing, Customer shall be free to copy, disclose and use Supplier's documentation and information so long as such copying, disclosure and use is in connection with the project(s) that are the subject of the Purchase Order. Nothing in the Purchase Order shall be construed as a transfer or grant, by implication or otherwise, of any right, title or interest, including license, in respect of any Confidential Information, know-how or intellectual property of any kind, including any rights under any patents or patent applications.

20. **Non-infringement of Intellectual Property:** Supplier guarantees that the sale and use of the Supplies do not and will not infringe any patents, trademarks, or other intellectual property rights or embody any unauthorized use of trade secrets. Supplier covenants and agrees to defend, indemnify and hold harmless Customer and its customers and the users of its Supplies against any and all claims, demands, costs and expenses (including attorney's fees) arising from or attributable to such infringement or unauthorized use of trade secrets. Customer shall have the right to select its own counsel and to approve any counsel selected by Supplier.

21. **Force Majeure:** Neither party shall be considered in default of any obligations under the Purchase Order to the extent prevented or delayed by an event of Force Majeure. Force Majeure shall mean circumstances beyond the reasonable control of the affected party that could not be foreseen by the parties before issuance of the Purchase Order and which the affected party could not reasonably avoid or overcome.

If Supplier should be prevented from fulfilling its obligations by Force Majeure for a period of ninety (90) days or more, Customer may cancel the Purchase Order and purchase elsewhere. In case of such termination, Supplier shall be entitled to its reasonable, documented direct costs for Supplies incurred in performing its obligations under the Purchase Order up to the date of termination less any amounts paid to Supplier or owing to Customer. No claim for profits shall be allowed.

Any claim of Force Majeure must be given according to § 26 (but within five (5) days of the occurrence of the circumstances causing delay). The affected party shall have a duty to minimize any delays resulting from Force Majeure.

22. **Suspension and Cancellation:** Customer may at any time suspend the performance of all or a part of the Supplies for any reason by giving written notice to Supplier. During the suspension, Supplier shall protect and secure the suspended Goods against deterioration, loss and damage and undertake all other actions requested by Customer. Supplier shall, as its sole and exclusive remedy,

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be entitled to reimbursement of its documented out-of-pocket cost and expenses and increased costs with respect to its personnel directly resulting from any such suspension.

Further, Customer shall be entitled to terminate the Purchase Order forthwith without any liability to Supplier by giving notice to Supplier at any time if: (a) Supplier makes any voluntary arrangement with its creditors or becomes bankrupt, insolvent or otherwise unable to pay its debts when due, (b) there is a change in control of Supplier (where control means the ability to direct the affairs of another) or (c) Customer determines in good faith there is a material change in the financial position of Supplier which will likely adversely affect Supplier's ability to perform its obligations.

Customer may at any time terminate for convenience the Purchase Order for any reason by giving written notice to Supplier. Supplier shall immediately implement Customer's instructions. In the event of such termination, Supplier shall, as its sole and exclusive remedy, be entitled to the portion of the Purchase Order price corresponding to the works performed by Supplier less any amounts paid or otherwise due by Customer. Customer may take immediate possession of all work so performed upon written notice of termination to Supplier and, upon Customer's request, Supplier shall transfer to Customer Supplier's rights in respect of the Supplies in any subcontracts.

**23. Customer's Remedies:** If Supplier breaches any of its obligations under the Purchase Order, including failing to meet any agreed (partial or final) Delivery Date(s), breaching any representation or guarantee or failing to effect any remedy according to the requirements of this Purchase Order, Customer may, to the maximum extent permitted by applicable law, do any one or more of the following: (1) revoke acceptance of delivery; (2) demand an immediate cure by Supplier; (3) step in and remedy, for Supplier's account, any such breach, including effecting cover by purchasing same or similar Supplies supplied by another vendor and recovering any increase in price and its resulting damages, costs and expenses (4) recover from Supplier all its damages, losses, costs and expenses resulting from Supplier's breach, including any that are incurred or will be likely incurred by Customer in effecting a remedy or imposed on Customer by Owner; (5) offset against any payments owed to Supplier any damages, losses, costs and expenses incurred or to be incurred by Customer; or (6) withhold any payments that may otherwise be due until the breach is fully remedied. In the event Supplier fails to perform any material obligation under this Purchase Order and has not cured the failure within thirty (30) days of receipt of written notice of such failure thereafter Customer shall in addition to the foregoing remedies be entitled to reject the delivery and to terminate the Purchase Order in whole or part. The above remedies shall be cumulative with, and not exclusive of, the remedies stipulated in these General Conditions of Purchase or otherwise available to Customer under applicable law. Payment, inspection or acceptance of all or any part of the Goods shall not constitute any acceptance by Customer of the price, proper quality or quantity of the supplied delivery and shall not imply a waiver of any right pursuant to these General Conditions of Purchase or the agreement with Supplier and shall not release Supplier from any liability in this respect.

**24. Indemnity:** Supplier shall defend, indemnify and save harmless Customer and Owner and their agents, directors, officers and employees from and against all claims, actions, demands, liabilities, damages, losses, costs and expenses (including attorney's fees) to the extent resulting from any breach of contract, negligence, gross negligence and/or willful misconduct of Supplier, its agents or employees in connection with the Purchase Order. Supplier shall also be responsible for and indemnify Customer for any and all

attorney's fees reasonably incurred by Customer in enforcing the terms of the Purchase Order.

**25. Limitation of Liability:** Neither party shall be liable for any indirect losses or damages nor any loss of profit.

**26. Supplier's Claims:** Supplier must assert any claim against Customer within twenty-one (21) days of the circumstances giving rise to the claim, or otherwise such claim shall be forever waived and barred. Supplier's claim must be in writing and give full particulars as to the amount of Supplier's claim and the factual and contractual basis. No claims other than contractual claims based on the Purchase Order are permitted. Supplier's claims for monetary compensation, if allowed, shall be limited to recovery of Supplier's reasonable and documented direct costs only; Supplier disclaims all other costs and damages, losses or expenses, including overheads, profits and incidental or consequential damages or losses of any kind.

Subject to Supplier's strict compliance with the provisions of the foregoing paragraph in this § 26, Supplier may claim an extension of time to the Delivery Date(s) only in case of Force Majeure under § 21 and where Customer fails to comply with an express obligation under the Purchase Order and such failure is the sole cause of a delay in completion and the critical path for the Supplies. No claims for extension of time are allowed in case of concurrent delay by Supplier and Customer. In no event may Supplier claim against Customer any damages, losses, costs or expenses resulting from any delay, prevention or disruption regardless of the cause.

**27. Assignment and Subcontracting:** Supplier may not assign the Purchase Order or any rights or obligations hereunder nor subcontract all or any material aspect of the work called for hereunder without the prior written consent of Customer; any such assignment or subcontracting being null and void. Any

subcontracting, if permitted, shall not relieve Supplier of any of its obligations under the Purchase Order. It is expressly agreed that any guarantees or warranties given by Supplier in connection with the Purchase Order shall inure to the benefit of and shall be enforceable by Customer, its customers and Owner.

**28. Governing Law and Dispute Resolution:** The Purchase Order and all matters relating to the Purchase Order shall be governed by the laws of the country where Customer has its seat of business if not otherwise stipulated in the Purchase Order. The UN Convention on the International Sale of Goods shall not apply. All disputes arising out of or in connection therewith which cannot be amicably settled shall be resolved exclusively by the courts of the country where Customer has its seat of business if not otherwise stipulated in the Purchase Order. Supplier waives any defence of lack of jurisdiction, improper venue or inconvenient forum. Supplier shall continue to perform fully and unconditionally all its obligations notwithstanding the pendency of any dispute or related proceeding.

**29. Miscellaneous:** Supplier may not communicate with or take any orders from Owner with respect to the Purchase Order and, if addressed by Owner, Supplier shall refer the matter to Customer.

Supplier shall perform the Supplies as an independent contractor; the relationship of the parties shall in no event be construed as that of principal/agent, employer/employee, a partnership or other similar relationship.

Supplier may not refer to Customer or Owner without Customer's prior written authorization.

In case of any software, Supplier permits Customer to market and resell the software and any accompanying hardware either alone or as part of a package. Supplier shall provide such technical advice, data and documentation, including source code where necessary, to enable Customer to maintain the software if it wishes.

In the event any of the provisions of the Purchase Order, including these General Conditions of Purchase, is ruled invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity or enforceability of the remaining provisions of this Purchase Order, including these General Conditions of Purchase, which shall be construed and interpreted to the extent permitted by applicable law to further the intent of the parties.

If the Purchase Order is stated in English and another language, the English version shall prevail in case of any conflict or inconsistency.

Supplier shall comply with Customer's Global Business Conduct Policy ([www.Clauger.com](http://www.Clauger.com)) and shall ensure that its directors, officers, employees, suppliers and subcontractors are legally bound to a similar compliance obligation. Supplier shall keep Customer fully indemnified in respect of any breach of this obligation. Any breach of this obligation shall entitle Customer at any time to cancel immediately the Purchase Order without any liability to Customer.

The Purchase Order may be executed in one or more counterparts, each of which shall constitute one and the same instrument.

In compliance with ISO 9001-2015, we inform you that, as a supplier, you will be evaluated through face-to-face audits or analysis of number / response / importance of No Qualities or significant legal or financial problems.