

# UTILITY REFRIGERATOR WARRANTY AND TERMS AND CONDITIONS OF SALE

**GOVERNING LAW:** The rights and obligations of the parties relating to any purchase shall be governed by the law of the State of California, United States of America. The proper venue for any action arising relative to the purchase/sale of units/parts shall be Los Angeles, California, and the parties hereby consent to the jurisdiction of any Court located in this venue.

**Limited Warranty:** Utility warrants to the original end user only, that every new Utility unit, shall for a period of FIVE (5) YEARS\* but under no circumstances for a period of more than SIXTY THREE (63) MONTHS from the date of shipment (F.O.B. place of shipment), be free from defects in material and/or workmanship subject to: a) the unit/part being properly installed, started, and maintained, which includes, but is not limited to, the use of proper electrical wiring, appropriate voltage, adequate ventilation, suitable ambient conditions (including temperature and relative humidity as set forth in the Utility Refrigerator Installation, Operation, and Maintenance Manual), proper leveling, and the performance of regular maintenance service; and b) the ordinary and proper use of the unit/part. During the first (1<sup>st</sup>) year of the five (5) year warranty, Utility shall provide labor and/or parts as are required to repair defects in the unit; during the last four (4) years of the five (5) year warranty, Utility shall be obligated to replace defective parts within the new unit, only, and shall not provide labor of any kind. In the event Utility provides Customer with a replacement part for a new unit, the warranty period on said replacement part shall expire upon the earlier of (i) one year from the date of shipment of the replacement part; or (ii) the expiration of the original warranty period on warranted, new unit. This warranty does not extend to or include any parts or labor for calibration or adjustments of thermostats, defrost timers, pressure or temperature controls, door mechanism adjustments, leveling, tightening of fasteners, utility connections and/or other items associated with or resulting from the installation of the unit, unless Utility performed the installation. Furthermore, it does not extend or apply to any units/parts used for residential purposes or for any units/parts sold outside of the United States. **Utility assumes no liability whatsoever for any claims which are a result of ambient conditions which exceed the manufacturer's recommendations.**

\*Gaskets and refrigerants which are part of and included in any new unit shall be warranted, on the terms and conditions set forth above, for a limited period of 1 year but under no circumstances for a period of more than fifteen (15) months from the date of shipment of the new Utility unit. Replacement parts sold to the end user outside of the new unit warranty period are warranted for one (1) year from the date of shipment only, with Utility's sole obligation to provide a replacement part of like kind only (no labor or freight charges included).

**Remote Units:** For any remote units, Utility's warranty shall only extend to the structure of the cabinet, and the coil if it is supplied and installed by Utility.

**COURTESY, LIFETIME TELEPHONE TECHNICAL SUPPORT:** Utility provides original end users only with courtesy technical support for the life of the unit. Technical support is subject to and conditioned on purchaser's continued compliance with Utility's terms and conditions set forth herein, and any applicable unit use instructions/restrictions. Utility may, at its sole discretion, from time to time, and with or without notice, designate, including limiting, the time, place and manner by which it will provide technical support. Currently, technical support is provided during Utility business hours, Monday through Friday, by a Utility technician via telephone, facsimile or other electronic means of communication. Technical support is intended as a courtesy, troubleshooting service for purchaser only, and shall not create any promise/obligation not set forth in these terms and conditions. It is NOT intended to be and this section shall NOT be construed as creating a warranty of any nature or kind. Utility does not represent or warrant any specific result or outcome to be obtained through end user's use of technical support.

**Warranty Claims:** Any and all claims for warranted items shall be made within a reasonable time of the occurrence of any event giving rise to a claim, and in no event later than fourteen (14) days from the date of such occurrence. All claims shall be submitted in writing to Utility and should include the model and serial number of the unit/part, proof of purchase, date of installation, identity (name, address and telephone number) of installer, description of the problem and any other information supporting a claim. Utility's obligation under this warranty is, with respect to new units, limited to repair only, and with respect to parts purchased, limited to replacement with a part of like kind (no labor). Utility shall determine the time and manner in which any warranted problem will be resolved, including the manner in which labor and parts will be provided. Utility may authorize or instruct claimant to provide for a warranted repair subject, however, to limitations on permitted costs for labor and parts according to Utility's labor and part rate structure ("in warranty service"). Authorization for any in warranty service must be approved by Utility, in advance and in writing, or shall not be covered under this warranty. **Any work performed by an unauthorized service agent will void this warranty.** Customer hereby agrees to hold Utility harmless from any and all damage sustained as a result of any defective unit/part and/ as a result of any time/delay in assessing, processing and fulfilling warranty claims

**FIVE YEAR COMPRESSOR WARRANTY:** Utility warrants any defects of the hermetically sealed compressor, of any self-contained unit purchased, for a period of FIVE (5) YEARS, not to exceed sixty-three (63) months from the date of shipment. Said warranty applies only to the hermetically sealed parts of the compressor, and does not include coverage or charges for labor. The claims process under "Warranty Claims" above applies.

**THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE WARRANTY SET FORTH ABOVE.** With the exception of the above, express warranty, Utility does not make any warranties, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose. No agent, employee or other representative of Utility had or has the authority to bind Utility to any representation, promise, affirmation, or warranty regarding any unit/part purchased from Utility other than as expressly provided herein. Buyer acknowledges and agrees that the only representations and warranties that have been made and which Buyer may rely on are those which are set forth above, expressly.

Any purchase of units/parts from Utility Refrigerator ("Utility") is subject to the terms and conditions set forth below, which purchaser, by placing an order and/or by purchasing unit(s)/part(s), agrees to be bound to.

**PRICES / TERMS OF PAYMENT:** All listed prices and specifications are subject to change at the sole discretion of Utility, with or without notice. Unless otherwise agreed to in writing, all payments shall be made in United States currency (dollars) and in a form deemed acceptable to Utility. Payment shall be due in full at the time of purchase. Utility shall have no obligation to perform any term or condition contained herein or any other act whatsoever, unless and until payment has been made in full. Utility may, but is not obligated to, vary terms of payment for Buyers that it deems qualified, in its sole discretion (for example, providing Net 30 terms). In the event Buyer shall fail to make any payment due to Utility on or before the date(s) due, as specified in writing or otherwise agreed upon, Utility shall be entitled to a late charge equal to ten percent (10%) of such payment(s) due, plus interest on said sum(s) from the date of default. In addition, in the event it shall be necessary for Utility to pursue collection of any sum due from Buyer, Utility shall be entitled to recover the attorney fees and costs incurred in the process.

**DELIVERY:** Purchases are F.O.B., place of shipment, North Hollywood, California, or any other place of shipment as may be deemed appropriate or desirable by Utility. List prices do not include freight/delivery charges, which shall be incurred by Buyer. Utility may, but is not obligated to, assist Buyer in making freight/delivery arrangements. It is understood and agreed that any such assistance shall not subject Utility to liability for any damage arising from or relating thereto. Any expressions regarding anticipated delivery dates, whether oral or written, are estimates only. Although Utility will expend its best effort to assist in meeting any estimated delivery dates, Buyer understands that unforeseen circumstances may result in delay and thus agrees to hold Utility harmless therefrom.

**CANCELLATION / RETURNS:** Buyer may modify or cancel an order prior to Utility manufacturing, ordering, obtaining or designating unit(s) for, or otherwise attempting to fulfill, an order. After the attempted fulfillment of an order and prior to the time of shipment, Buyer may cancel subject however to paying the costs incurred and/or loss sustained by Utility relating to the order and its attempted or actual fulfillment. After the time of shipment, Buyer may return unit(s) purchased for credit only, and only with the written consent of Utility. Such written consent, if granted, may be conditioned in part on the payment of a restocking fee (currently twenty five percent (25%) of the unit purchase price, and 15% in the case of replacement parts) and on condition that Buyer return the unit/part in perfect, saleable condition, and with all expenses for the return shipping pre-paid by Buyer. Any order for custom units or parts cannot be cancelled or returned at any time or under any circumstance unless Utility provides its written consent to same.

**NON-CONFORMITY:** All units/parts are sold according to specifications deemed appropriate by Utility and/or particular specifications set forth in writing on any order confirmation. Buyer shall immediately notify Utility in writing (no later than 24 hrs. after order confirmation is delivered), if it believes that an order does not contain particular specifications desired and/or agreed upon, or if there are any other errors/omissions with the order. Otherwise, Buyer waives any related claim of non-conformity. Buyer agrees to provide written notice to Utility of any claim of non-conforming units/parts within forty eight (48) hours of Buyer's receiving same. If Buyer does not provide written notice within this time frame, Buyer will be deemed to have accepted the unit(s)/part(s) and relinquished any rejection rights. Written notice of non-conformity must contain a description of the unit(s)/part(s) received and the basis for non-conformity. Within a reasonable time of receiving such notice from Buyer, Utility may request further evidence of non-conformity and/or provide Buyer with instructions for the disposition of those materially non-conforming unit(s)/part(s). Utility shall be entitled to replace non-conforming with conforming unit(s)/part(s) or may issue Buyer a credit for same.

**RISK OF LOSS / FREIGHT DAMAGE:** Buyer bears the risk of loss after such time that the unit(s)/part(s) are placed in possession of the shipper/carrier. In the event any shipment is delivered in damaged condition, Buyer should take such action as is reasonably necessary to protect any rights that may exist against the carrier including, but not limited to, noting any damage on the freight "bill" in writing, having the carrier's driver sign the freight bill with damage notation, immediately notifying the carrier of the damage/claim, and maintaining the shipping container and/or other evidence of damage and cause of damage.

**FORCE MAJEURE / EXCUSED PERFORMANCE:** In the event that Utility's performance is made impossible or impractical as a result of fire, explosion, flood, riot, labor dispute, shortage, accident, act of God, regulation, law, or any other event or circumstance outside of Utility's direct control, Utility may opt to cancel any effected order, will be excused from performing, and will be discharged of any and all obligations and liabilities related thereto.

**HOLD HARMLESS FROM USE:** Buyer has been advised to read all written materials provided by Utility respecting the units/parts ordered. All units/parts purchased should be installed properly, sufficiently ventilated, and used with caution, safely, and for no purpose other than their normal, intended use. Buyer understands and agrees that Utility will not be held responsible or liable for damage of any kind (including food spoilage) resulting from Buyer's use of the unit(s)/part(s) purchased, regardless of cause. Accordingly, Buyer agrees to indemnify, defend, and hold Utility harmless from and against any and all claims asserted and damages sustained by Buyer or any third party as a result of or arising from Buyer's use of any unit/part purchased.

**NOTICES:** Any notice required by these terms shall be sent by personal delivery, regular mail, overnight delivery or facsimile to Utility's principal office. Notice is deemed effective on the date it is delivered and received by Utility.