

Terms & Conditions

1. Definitions

- 1.1 "Seller" shall mean R & R Airconditioning Pty Ltd.
- 1.2 "Customer" shall mean the Customer or any person acting on behalf of and with authority of the Customer.
- 1.3 "Guarantor" means the person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Seller to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Customer subject to Clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these Terms and Conditions by the Customer the Terms and Conditions are irrevocable and can only be rescinded in accordance with these Terms and Conditions.
- 2.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.5 The Customer undertakes to give the Seller not less than fourteen (14) days prior to written notice of any proposed change in the Customer's name and/or any change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice).

3. Goods

- 3.1 The Goods are described on the invoice, quotation, work authorised or any other work commencement forms as provided by the Seller to the Customer.

4. Price and Payment

- 4.1 At the Seller's sole discretion the Price shall be either:
 - (a) As indicated on invoices provided by the Seller to the Customer in respect of Goods supplied or
 - (b) The Seller's current price, at the date of delivery of Goods, according to the Seller's current Price list or
 - (c) The Seller's quoted Price (subject to Clause 4.2) which shall be binding upon the Seller provided that the Customer shall accept in writing the Seller's quotation within thirty (30) days
- 4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice, payment for all variations must be made in full at the time of completion.
- 4.3 At the Seller's sole discretion a deposit may be required, the deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
- 4.4 Time of payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order form; if no time is stated then payment shall be on delivery of the Goods.
- 4.5 At the Seller's sole discretion, for certain approved Customers, payment will be due seven (7) days following the date of the invoice.
- 4.6 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and the Seller.
- 4.7 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent given by the Seller.

5. Delivery of Goods/ Services

- 5.1 Delivery of Goods shall be made to the Customer's address; the Customer shall make all arrangements necessary to take delivery of the Goods where ever they are intended for delivery.
- 5.2 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.3 The Seller shall not be liable for any loss or damage due to failure by the Seller to deliver the Goods (or part thereof) promptly or at all.

6. Risk

- 6.1 If the Seller retains property in the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to them passing to the Customer, the Seller is entitled, without prejudice to any of its other rights or remedies under the Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable under the Contract; the product of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7. Customer's Disclaimer

- 7.1 The Customer hereby disclaims any right to rescind or cancel the contract or to sue for damages or to claim restitution arising out of the Seller and the Customer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the

warranty given by the Manufacturer which shall be personal to the Customer and shall not be transferable to any subsequent Customer.

8. *Defects/ Returns*

8.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote; the Customer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way; if the Customer fails to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the Terms and Conditions and free from any defect or damage.

8.2 For defective Goods, which the Seller has agreed in writing that the customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:

- (a) The Customer has complied with the provisions of Clause 8.1
- (b) The Goods are returned at the Customer's cost within seven (7) days of the delivery date
- (c) The Seller will not be liable for Goods which have not been stored or used in a proper manner
- (d) The Goods are returned in the condition in which they were delivered with all packaging materials

8.3 The Seller may (in their discretion) accept the Goods for credit but this may incur a handling fee of 15% of the value of the returned Goods plus any freight.

9. *Warranty*

9.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods; the Seller shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturer's warranty.

10. *The Commonwealth Trade Practices Act 1974 and Fair Trading Acts*

10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

11. *Building Construction Industry Security of Payments Acts 1999*

11.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 1999 may apply.

11.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of payments Act 1999 of New South Wales, Victoria, South Australia, except to the extent permitted by the Act where applicable.

12. *Default & Consequences of Default*

12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.

12.2 If the Customer defaults in payment of any invoices when due, the Customer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees costs of collection.

12.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss of damage the Customer suffers because the Seller exercises its rights under this clause.

12.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

12.5 In the event that:

- (a) Any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due or
- (b) The Customer becomes insolvent, convenes a meeting with its creditors or make an assignment for the benefit of its creditors or
- (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer

Then without prejudice to the Seller's other remedies at law

- The Seller shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
- All amounts owing to the Seller shall, whether or not due for payment, immediately become payable in addition to the interest payable under Clause 12.1 hereof

13. *Title*

13.1 It is the intention of the Seller and agreed by the Customer that property in the Goods shall not pass until:

- (a) The Customer has paid all amounts owing for the particular Goods and
- (b) The Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer, and that the Goods shall be kept separate until the Seller shall have received payment and all other obligations of the Customer are met

13.2 It is further agreed that:

- (a) Until such time as ownership of the Goods shall pass from the Seller to the Customer, the Seller may give notice in writing to the Customer to return the Goods or any of them to the Seller; upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease
- (b) If the Customer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods, without being responsible for any damages thereby caused
- (c) The Customer is only a Bailee of the Goods to the Seller and until such time as the Seller has received payment in full for the Goods then the Customer shall not hold any proceeds from the sale or disposal of the Goods on trust for the Seller
- (d) The Customer shall not deal with the money of the Seller in any way which may be adverse to the Seller
- (e) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue
- (f) The Customer shall not charge the Goods in any way nor grant otherwise give any interest in the Goods while they remain the property of the Seller
- (g) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Customer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the price
- (h) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that the ownership of the Goods may not have passed to the Customer
- (i) Until such time as the Customer has the Seller's authority to convert the Goods into products, and if the Goods are so converted, the parties agree that the Seller will be the owner of the end products

14. *Security and Charges* 14.1 Despite anything to the contrary contained herein or any other rights which the Seller may have whatsoever:

- (a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met
- (b) Should the Seller elect to proceed in any manner, in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis
- (c) To give effect to the provisions of Clause [14.1 (a) and (b)] inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Seller and/or the Seller's nominee shall think fit in his/her/its/their absolute discretion against joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the seller and in the customer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting and necessary legal proceedings and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect of the provisions of this clause.

15. *Cancellation*

15.1 The Seller may cancel these Terms and Conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice; the Seller shall not be liable for any loss or damage whatever arising from such cancellation

16. *Privacy Act 1988*

16.1 The Customer and/or the Guarantor/s agree for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to the credit provided by the Seller

16.2 The Customer and/or the Guarantor/s agree that the Seller may exchange information about Customer and Guarantor/s with those credit providers named in the application for Credit account or named in a consumer credit report issued by a report agency for the following purposes

- (a) To assess an application by the Customer
- (b) To notify other credit providers of a default by the Customer
- (c) To exchange information with other credit providers as to the status of this credit account where the Customer is in default with other credit providers and
- (d) To assess the credit worthiness of a Customer and/or Guarantor/s

16.3 The Consumer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit report (Section 18K (1) (h) Privacy Act 1988.

16.4 The Customer agrees the Personal Data provided may be used and retained by the Seller for the following purposes as shall be agreed between the Customer and Seller or required by law from time to time:

- (a) Provision of Service & Goods
- (b) Marketing of Services and/or goods by the Seller and/or its agents or distributors in relation to the Services and Goods
- (c) Analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Services/Goods
- (d) Processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer and
- (e) Enabling the daily operation of Customer's account outstanding in the collection of amounts outstanding in the Customer's account in relation to the Services and Goods

16.5 The Seller may give information about the Customer to a credit reporting agency for the following purposes:

- (a) To obtain a Customer credit report about the Customer or

(b) Allow the credit reporting agency to create or maintain a credit information file containing information about the Customer

17. *Unpaid Seller's Rights to Dispose of Goods*

17.1 In the event that:

- (a) The Seller retains possession of control of the Goods; and
- (b) Payment of the Price is due to the Seller and
- (c) The Seller has made demand in writing of the Customer for payment of the price in terms of this contract and
- (d) The Seller has not received the price of the Goods, then, whether the property in the Goods has passed to the Customer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Customer the loss to the Seller on such disposal

18. *Lien & Stoppage in Transit*

18.1 Where the Seller has not received or been tendered the whole of the price, or the payment has been dishonoured, the Seller shall have:

- (a) A lien on the goods
- (b) The right to retain them for the price while the Seller is in possession of them
- (c) A right of stopping the goods in transit whether or not delivery has been made or ownership has passed and
- (d) A right of resale
- (e) The foregoing right of disposal, provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the price having been obtained

19. *General*

19.1 The Seller shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.

19.2 In the event of any breach of this contract by the Seller the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.

19.3 The Customer shall not set off against the Price amounts due from the Seller.

19.4 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

19.5 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Customer of such change.