

**AIR CONDITIONING SERVICES (NZ) LTD**  
**TERMS AND CONDITIONS FOR SALE AND SERVICES**

**1.0 Definitions**

- 1.1 "Company" shall mean Air Conditioning Services (New Zealand) Limited and the Company's assigns.
- 1.2 "Customer" shall mean the person(s), firm, company, partnership or corporate entity to whom the purchase order or service order is submitted or with whom the company enters into a contract.
- 1.3 "Default rate" means the amount of 1.5% per month charged by the Company to the Customer, in addition to the Price or Payment of Monies for any late, overdue, or outstanding payment.
- 1.4 "Goods" shall mean those Goods or equipment supplied by the Company to the Customer for the purposes of sale, service or repair.
- 1.5 "GST" means Goods and services tax pursuant to the Goods and Services Tax Act 1985 and its statutory amendments.
- 1.6 "Guarantor" means the person(s) liable on behalf of the Customer to the Company, either jointly or severally, for the payment of all monies and performance of all obligations, liabilities and covenants under the Agreement
- 1.7 "PPSA" means the Personal Property Securities Act 1999 and its statutory amendments and associated regulations.
- 1.8 "Price" means the consideration paid for the Goods and Services provided by the Company and explained further at clause 3.
- 1.9 "Services" means the services, repairs and maintenance provided by the Company to the Customer and provided in the attached Agreement.

**2.0 Acceptance of Terms and Conditions**

- 2.1 The terms and conditions are the terms on which the Company offers the Customer(s) provision to its Goods and Services. Acceptance occurs immediately upon the first of the Agreement for Provision of Goods and Services being signed or instruction for the Provision of Goods and Services being received by the Company from a Customer.
- 2.2 These terms and conditions may only be amended by means of written Agreement between the Company and the Customer. The Company has the total discretion to vary, or decline to vary, any such part of these Terms and Conditions as they deem necessary.
- 2.3 These conditions of sale may be unilaterally varied by the Company from time to time, and every variation made pursuant to this clause shall be deemed to have been accepted by the Customer unless the Customer can reasonable be seen to have been unfairly prejudiced by the variation.
- 2.4 If additions or modifications to the Goods and/or services quoted or ordered are requested by the Customer and accepted by the Company then the quotation or order will be adjusted to such extent as may be necessary having regard to the nature and extent of such additions or modifications but subject thereto all other conditions of the quotation or order shall continue to apply.

**3.0 Price**

- 3.1 All Prices shall be as quoted or in accordance with the Company's Price list and/or arrangements current at the time of delivery and/or service such Price lists are subject to the conditions stated thereon.
- 3.2 The Price does not include charges for freight, taxes (including GST), insurance or duties unless otherwise agreed between the Company and the Customer.
- 3.3 Any Price/payment of monies agreed between the Company and the Customer at the date of the order for Goods or Service may be varied if wages, salaries, costs of materials, freight rates, freight taxes, taxes, Government charges, insurance rates, duty and all exchange rates are increased between the date of the order and of delivery or service.
- 3.4 The Company's Prices are subject to alteration without notice and the Price payable by the Customer shall be the Price ruling at the time the Goods are delivered or the services are performed for the Customer by the Company.
- 3.5 Quotations are subject to acceptance within 30 days after which they shall lapse.

**4.0 Time and Manner of Payment**

- 4.1 The Customer shall pay the Price or the monies owing and due immediately upon receipt of the invoice. If the Customer fails to pay all monies owing and due on or strictly before 14 days from the date of the invoice, with a 50% deposit being payable upon placement of the order, the Customer shall pay interest at the default rate from the due date until payment.
- 4.2 Payment by cheque, bill of exchange or other negotiable instrument will not be considered as payment until actually paid or honoured and released in clear funds.
- 4.3 The Customer agrees that any debt to the Company is valid and enforceable and that the Customer does not have any right of set-off or counterclaim, and cannot bring any claim against the Company until the monies owing to the Company have been paid in full.
- 4.4 The Company may claim progress payments if quoted works are delayed or extend beyond one calendar month from commencement of the work.
- 4.5 Where the Goods and/or services are supplied overseas all monies due by the Customer shall be paid in New Zealand currency at the rate of exchange ruling at the time of payment.
- 4.6 The Price or monies owing shall become immediately payable regardless of the terms of payment and the Company may take immediate action to recover the Price including any legal or collecting costs if the Customer is in default under this Agreement, commits an act of Bankruptcy or goes into liquidation or receivership or enters into a creditor's composition or has its credit standing impaired in any other way.
- 4.7 In the event of sequential contracts for provision of services or delivery of Goods, money paid by the Customer will be applied to the earliest in time delivery or contract that is unpaid or has a portion unpaid for the purposes of determining the continued existence of a purchase money security interest taken by the Company with respect to particular deliveries of Goods.

**5.0 Delivery of Goods and/or Services**

- 5.1 Delivery shall be made at the place indicated by the order or as directed by the Customer. If no place shall be indicated by the order or be directed delivery shall be made at the Customer's premises.
- 5.2 The Company will make all reasonable efforts to have the Goods or Services delivered or provided to the Customer on the date agreed between the parties. The Company will not be liable for any loss or damage whatsoever incurred by the Customer by reason of any delay in or failure to deliver by the said date.
- 5.3 The Company may withhold delivery or decline services until all requirements of the Company have been met.
- 5.4 Goods may be delivered in instalments and in such case each delivery shall be regarded as a separate contract and Goods delivered shall be paid for accordingly. The failure to make any delivery or service shall not vitiate the contract as to other deliveries.
- 5.5 Notwithstanding any provisions as to the time or date of delivery, deliveries may be totally or partially suspended by the Company during any period in which the Company may be prevented from delivering through any circumstances outside its (reasonable) control, including but not limited to any fire, accident, earthquake, flood, crime, war, blockage, civil commotion, epidemic, strike, lockout, labour dispute (whether or not at the works of the manufacturers) shortage of fuel, power or raw material or inability to obtain transport, and no such suspension shall entitle the Customer to cancel this contract or to refuse to accept delivery of the Goods.

- 5.6 If the Goods are damaged, lost or destroyed in transit, the Customer shall make a claim against the insurer and in doing so shall comply with the insurer's requirements with regard to the claim.
- 5.7 If the Customer cannot or will not accept delivery at the requested date or at an extended date as agreed between the parties, the Customer shall make payment to the Company no later than 20 days after the end of the month in which the Customer had originally requested delivery. The Customer shall pay on demand to the Company any storage charges incurred by the Company for the Goods from the day following the date on which delivery was to be made until the date on which the Goods are dispatched to the Customer.

#### **6.0 Installation**

- 6.1 If this contract provides that the Goods shall be installed by the Company, the Customer shall ensure that adequate access to any new or existing buildings without interruption or interference is available when specified or requested by the Company and that any strengthening or reinforcement of such buildings found necessary shall be contemplated at the cost of the Customer.
- 6.2 Any licence, permit, certificate or approval required to enable the Company to install the Goods or provide service(s) shall be obtained by the Customer.

#### **7.0 Disclaimer**

- 7.1 The Customer shall rely upon its own judgement as to the nature, quality, noise, vibration, performance and condition of the Goods and its suitability for any purpose and not upon any representation made by the Company or the Company's employees, agents or contractors. Any description of the Goods given by the Company's employees, agents or contractors should not constitute a sale by description and the Company will not be liable for any apparent or supposed misrepresentation.
- 7.2 An inspection by the Customer of a sample of the Goods shall not constitute a sale by sample. The company reserves the right to make minor modifications in its product, with any major changes being subject to acceptance by the Customer.

#### **8.0 Notification of defects and return of Goods**

- 8.1 All Goods are sold and services provided as agreed between the Company and the Customer otherwise stated on the invoice. Goods that are supplied in error are returnable for replacement or credit, provided the error is notified to the Company within seven days of the packing slip date (time being of the essence).
- 8.2 The date and number of the original packing slip or invoice must accompany the Goods being returned.
- 8.3 No claim will be allowed where the Goods have been damaged, marked or shop soiled.
- 8.4 Defective items will be replaced, or if unavailable, credited in full, provided they are returned to the Company within seven days of receipt of the Goods.
- 8.5 Where the Company does accept the Goods for return unless the Goods are supplied in error or defective, the costs for the return shall be to the Customer's account and the Company may, in addition charge to the Customer a handling fee.
- 8.6 Subject to clause 8.7, No damages, direct or indirect, in respect of this contract shall exceed the invoice value of the specific Goods or articles complained of, and no damages will be recoverable by the Customer, in any event, unless they give written notice of their claim to the Company within seven days of receipt of the Goods, or within 7 days of when the defect should have been reasonably noticed.
- 8.7 In respect of packaged liquid chillers and complete refrigerant systems supplied by the company the Company agrees that for any applicable period of warranty no longer than 18 months from the time the Agreement for Goods or Services was entered into the Company will replace refrigerant loss from the Goods caused by a defect in the Company's Goods, materials or workmanship. This replacement does not apply where the Goods have been misused or adjusted by unauthorised personnel.

#### **9.0 Warranty as to Goods and Services**

- 9.1 The warranties and guarantees provided are those of the Manufacturer only. The Company provides no additional warranties or guarantees unless agreed by the Company and Customer and evidenced in writing.

#### **10.0 Second-hand Goods**

- 10.1 The Customer agrees that if they have purchased second hand Goods they have had reasonable time to inspect the Goods. Any warranties or guarantees provided with second-hand Goods will be assigned to the Customer if they are available.

#### **11.0 Reservation of Title and Risk**

- 11.1 Title in the Goods will only pass to the Customer upon the Customer completing all payments of monies, and any outstanding fees, costs or fines, in cleared funds. Once such Goods leave the Company's warehouse for dispatch to the Customer then the Customer assumes all risk in the property, regardless of whether title in the Goods has passed or not, unless otherwise agreed in writing.
- 11.2 Without limiting the generality of the above clause, the Customer assumes all risks and liabilities for any consequences arising from the use of any or all of the Goods whether singly or in combination with other products, for any damaged Goods, and for any wrong deliveries.
- 11.3 Until the moment title passes the Company may, without prejudice to any of its other rights or remedies, repossess any of the Goods, whether or not payment may have been received for some, and for that purpose may by its servants or agents enter any premises where the Goods may be situated and take whatever other action is required in order to repossess the Goods. The Company shall incur no liability arising as a result of such repossession of the Goods, and the Customer hereby indemnifies the Company, its , its employees, contractors, servants and agents for any alleged liability arising as a result of the repossession, and the Customer shall pay all costs incurred by the Company in respect of the repossession.

#### **12.0 Customers Rights and Obligations**

- 12.1 The rights of the Customer are limited to those contained in the Terms and Conditions of the Company and any attached warranties or guarantees. The rights do not extend to any representations made by any representatives of the Company, verbal or otherwise, that are not contained in the aforementioned terms and conditions, warranties or guarantees.
- 12.2 The Customer undertakes at once to forward orders to enable this contract to be performed and in consideration thereof (and subject to the Company being able to give delivery) the Customer is not to be at liberty to cancel the Agreement or any part thereof, except on giving 30 days written notice, and in the event of such cancellation the Customer agrees to pay the Company all the expenses directly or indirectly incurred by the Company in conjunction therewith to the date of cancellation.

#### **13.0 Company's Rights and Obligations**

- 13.1 Any offer to purchase shall not be binding on the Company unless the Company by its duly appointed officer accepts such offer in writing. The Customer expressly waives any liability of the company to communicate its acceptance of any such offer to the Company.
- 13.2 In consideration of the Company agreeing to enter into this Agreement with the Customer the Guarantor (jointly and severally if more than one) hereby guarantee to the Company the due and punctual payment by the Customer to the Company of the monies from time to time owing by the

Customer to the Company in terms of this Agreement and due and punctual performance by the Customer of all the obligations, duties, liabilities and covenants of the Customer under this Agreement.

- 13.3 If the Customer does not make any payment of monies, charges, costs or fees by the due date, in whole or part, the Company may bring any action including but not limited to charge overdue interest; charge for costs of collection and ancillary amounts; charge for solicitors costs; place a company into liquidation; bring proceedings for bankruptcy; stop any further delivery of Goods; remove the Goods as outlined at clause 11 & 19, or register a mortgage, charge, lien or caveat over any of the Customer's real property up to the value of the Goods and any ancillary amounts that have arisen through failure to pay.
- 13.4 These consequences may be used singularly or in conjunction with another. The exercise of such a remedy does not limit the rights of the Company in law, contract or otherwise.
- 13.5 The Company has the discretion to presume any Good left for repair and not collected within a period of 90 days have been abandoned. Once the Goods are deemed to have been abandoned the Company has the right to dispose, sell or deal with the property any way the Company deems appropriate.
- 13.6 The Company has the total discretion to subcontract any or all of its services to the Customer. All Subcontractors will operate under the same Terms and Conditions of Agreement as the Company and Customer, unless the Customer agrees in writing to any change of terms proposed in relation to the subcontractors.
- 13.7 In any event, under no circumstances will the Company, its employees, subcontractors, or agents be liable to the Customer in contract, tort (negligence) or any other principle of legal liability, for loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss whatever.
- 13.8 If the Company provides the Goods to the Customer for the purposes of a business, or in relation to the Customer's business, the Customer acknowledges that pursuant to section 43 of the Consumer Guarantee's Act 1993, the provisions of the said Act shall not apply. All other Agreements between the Company and Customer(s) are privy to both the Fair Trading Act 1986 and Consumer Guarantees Act 1993.
- 13.9 The Company retains the absolute discretion to cancel any order, in whole or in part, at any time on giving the Customer 5 days written notice.

#### **14.0 Occupational Health and Safety**

- 14.1 The Customer warrants that any site the Company, its employees, contractors, servants or agents may have contact with in the provision of Goods and services meet all requirements and obligations as specified in the Health & Safety in Employment Act 1992. The Customer warrants that such sites are under their control and the Customer warrants they have eliminated, isolated and minimised all hazards and any breach of the same will be at the liability of the Customer.

#### **15.0 Limitation of Liability**

- 15.1 If the Company shall be found to be liable to the Customer (whether under the express or implied terms of this Agreement, in negligence, or otherwise at common law) for any costs, loss or damage suffered by the Customer, however caused and of whatever nature, arising out of or connected with the performance or failure of performance of this Agreement then the maximum amount of that liability in total for the aggregate for all such claims against the Company shall be no greater than the Price of Goods or Services provided by the Company.
- 15.2 The liability of the Company to the Customer against claims, losses, damages, liabilities, costs and expenses as aforesaid shall be reduced proportionately to the extent that any act or omission of the Customer, their officers, directors, employees and/or contractors (whether amounting to a breach of this Agreement or not) has contributed towards any such loss or damage.

#### **16.0 Privacy Act 1993**

- 16.1 The Customer agrees that the Company may obtain information about the Customer and the Customer consents to any person providing the Company with such information.
- 16.2 The Customer agrees that the Company may use any information it has about the Customer relating to the Customer's credit worthiness and may give that information to any other person including any credit or debt collection agency for credit assessment and debt collection purposes.
- 16.3 The Customer must notify the Company of any change in circumstances that may affect the accuracy of information provided by the Customer to the Company.
- 16.4 If the Customer is an individual, the Customer has rights under the Privacy Act 1993, to access and request the correction of any personal information which the Company holds about the Customer.

#### **17.0 Intellectual Property**

- 17.1 Notwithstanding the Company's right to charge a fee for development costs, and unless there is an express written term to the contrary, the property in all designs, sketches, formulations and specifications and all dyes, tools and other manufacturing items shall be and remain that of the Company.

#### **18.0 Construction Contracts Act 2002**

- 18.1 The Company warrants that any Agreement which comes under the Construction Contracts Act 2002, without limiting any other rights through law or this contract, will be privy to the rights and remedies that exist under that Act.

#### **19.0 Personal Property Securities Act 1999**

- 19.1 The Customer grants to the Company a security interest in the Goods supplied and the proceeds of the Goods and the Customer acknowledges that this Agreement creates a purchase money security interest in the Goods in the proceeds of the Goods. The Customer will, if the Company requests, sign any documents (including any new contracts), provide all necessary information and do anything else required by the Company to ensure that the Company's purchase money security interest is a protected security interest.
- 19.2 The Customer will not enter into any security Agreement and commit any other person to register any security interest in respect to the Goods or the proceeds.
- 19.3 If the Goods are for the Customer's business use the Customer agrees, to the extent Part 9 of the PPSA applies, that it will have no rights under Part 9 (Enforcement) of PPSA. The Customer agrees that where the Customer has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 19.4 The Customer waives its rights under the PPSA to receive a copy of any verification statement or financing change statement.
- 19.5 The expressions "personal property", "purchase money security interest", "security Agreement", "security interest", "protected security interest", "verification statement" and "financing change statement" have the meanings given to them under, or in the context of the PPSA.

#### **20.0 Dispute Resolution**

- 20.1 The Company and Customer agree that any Dispute arising out of this Agreement will attempt to be resolved by Arbitration, taking place in Auckland, the City closest to the physical address of the Company.