

Terms & Conditions

PRIVACY ACT

The Seller in assessing the Buyer's application for credit or at such later time in seeking to collect payments from the Buyer may contact a Credit Reporting Agency and pursuant to section 18E(8)(c) of the Privacy Act, give to the agency, personal information in relation to the Buyer's application for credit or any Guarantor of the Buyer as named in the accompanying Deed of Guarantee and Indemnity. Such information may include identity particulars; the fact that the Buyer has applied for credit and the amount; the fact that the Guarantor has offered to guarantee the performance of the Buyer; where payments are overdue for 60 days and notice has been given to the Buyer or any Guarantor; where payments have been made after becoming overdue; dishonoured cheques; credit provided by the Seller has been paid for or otherwise discharged and where appropriate, that a credit infringement has occurred.

In collecting overdue payments in respect of commercial credit provided to the Buyer, the Buyer and any Guarantor agrees to the Seller receiving from a Credit Reporting Agency a credit report containing personal information about the Buyer or any Guarantor in relation to such collection.

Where the Seller considers that it is relevant and/or necessary in assessing the Buyer's application for personal credit and/or commercial activities or commercial credit worthiness, the Seller may obtain information from a business, which provides such information about the credit worthiness of persons. The Buyer and any Guarantor agrees to the Seller, its servants or agents obtaining from a Credit Reporting Agency a credit report containing personal credit information about the Buyer or any Guarantor in relation to commercial credit applied for or provided by the Seller.

The Buyer and any Guarantor agrees that the Seller may give to and seek from any credit providers named in this application and any other credit providers referred to in the credit report issued by a Credit Reporting Agency, information about the Buyer's credit arrangements. The Buyer understands that this information can include any information about the Buyer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act. The Buyer and any Guarantor understands that this information may be used for the following purposes: to assess an application made by the Buyer for credit; the Buyer's or Guarantor's credit worthiness, to notify other credit providers of a default by the Buyer or any Guarantor; to exchange credit information with other providers as to the status of this line of credit, when the Buyer or any Guarantor is in default with other credit providers at any time whether now or in the future.

The Buyer and any Guarantor hereby acknowledges and consents to the above information being provided/disclosed/exchanged/requested by or to the Seller.

The Buyer and any Guarantor agrees that the Seller may seek from a Credit Reporting Agency, a credit report containing personal information about the Buyer and any Guarantor whether to assess the Buyer as a guarantor for credit applied for or provided to the Buyer named herein.

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

"Seller" shall mean **Air Conditioning Industries P/L** and include its employees and agents and any subsidiary Company of the Seller.

"Buyer" shall mean and include the person or persons, company or other entity named as the Applicant in the attached Application for Credit Account and any partner, servant, agent, contractor or employee of that person or company and in the case of two or more persons shall refer to each of them jointly and severally..

2. GENERAL

2.1 All orders placed by the Buyer will be subject to these Terms and Conditions of Sale unless otherwise expressly agreed to in writing by the Seller.

2.2 The Buyer waives any terms and conditions of purchase which are inconsistent with these Terms and Conditions of Sale.

2.3 The Buyer agrees that all contracts made with the Seller shall be deemed to be made in the State of New South Wales and the Buyer agrees to submit to the jurisdiction of the appropriate Court in that State.

2.4 All sales are made at the ruling price of the Seller at the time of delivery, unless otherwise agreed in writing.

2.5 Any notice in writing required to be given to the Buyer shall be deemed to be duly given or served after the expiration of 2 business days from the date of posting by ordinary pre-paid mail to the postal address (or where there is no postal address listed, to the business address) of the Buyer as set out in the attached Application for Credit Account, or such other address as may from time to time be provided by the Buyer, but only where such new address is acknowledged by return in writing from the Seller.

2.6 These Terms and Conditions of Sale may be the subject of any variation or alteration by notice in writing to the Buyer by the Seller, including but not limited to any variation or alteration which may be contained in any Tax Invoice(s) supplied to the Buyer by the Seller from time to time. Such variation or alteration will apply as and from the date the notice is given or any other date nominated by the Seller whichever should occur later.

2.7 The Seller shall be entitled at any time to assign its rights under the attached Application for Credit Account, these Terms and Conditions of Sale and any attached or accompanying Deed of Guarantee and Indemnity.

3. LIABILITY

3.1 The Seller shall not be liable for any claim, loss or expense whatsoever or howsoever arising which is made after the expiration of 14 days from the date of delivery.

3.2 The Seller will not be subject to any liability which exceeds the replacement value of the subject goods. The Seller will not be liable for any contingent, consequential or punitive damages arising in any way whatsoever. The Buyer acknowledges this express limitation of liability and agrees to limit any claim accordingly.

3.3 The Seller shall not be liable for any claim, loss or expense sustained or incurred by any person arising in any way as a result of the unavailability of goods or any failure or delay in delivery of the goods or any part thereof and such failure or delay will not affect the Seller's rights under these Terms and Conditions of Sale or otherwise.

3.4 Any advice, recommendation, information or representation provided by the Seller as to the quality or performance of the goods or their suitability for a particular purpose or otherwise in relation to the goods is given in good faith but without any liability or responsibility on the part of the Seller. The Buyer acknowledges that it has not relied upon or been induced by any representation by the Seller.

- 3.5 The Buyer agrees that this credit account is not transferable or assignable and that the Applicant and any Guarantors executing this Application for Credit Account or Deed of Guarantee and Indemnity, at all times remain liable to the Seller pursuant to these Terms and Conditions of Sale, unless the Seller expressly acknowledges in writing that the Seller has released the Applicant or any one or more of the Guarantors as the case may be, from any liability incurred on the granting of future credit.
- 3.6 The Buyer acknowledges and expressly agrees that where a Company or other corporation named in the Application for Credit Account as the Applicant changes its name, or where one or more of the directors of the Applicant is also or becomes a director of a new or different entity that commences and/or continues to trade with the Seller ("the New Entity"), that the New Entity will continue to remain liable to or will additionally become liable to the Seller in accordance with these Terms and Conditions of Sale as if the New Entity had completed a further Application for Credit Account with the Seller and will consequently and accordingly continue to hold or will additionally hold the Guarantor(s) named in the Deed of Guarantee and Indemnity liable to the Seller in the manner set out in the Deed of Guarantee and Indemnity to the extent that such Guarantor(s) are also director(s) of the New Entity.

4. PAYMENT

- 4.1 Unless otherwise agreed in writing, all prices are strictly net of GST and the Buyer shall make payment such that it is received by the Seller within thirty (30) days of the date of the Seller's Invoice.
- 4.2 Time for payment of the Seller's invoice(s) will be of the essence such that if payment is not made in accordance with the above payment terms, the Buyer agrees and acknowledges the Seller shall be immediately entitled to:
- 4.2.1 Suspend all further orders or the supply of goods or deliveries until all outstanding monies have been paid or to require the payment of cash upon delivery of any further goods.
- 4.2.2 Charge the Buyer a monthly account keeping fee being the greater of \$50.00 or 5.0% of the total of any and all monies which remain overdue for payment on the first day of each month.
- 4.2.3 Charge the Buyer an administration fee of \$50.00 per month or on any part of a calendar month in which monies remain overdue for payment or in the event that a cheque presented for payment is subsequently dishonoured.
- 4.2.4 Charge the Buyer interest at the rate of 3.0% per month calculated on a daily basis from the due date of payment on the total of any or all monies which remain overdue for payment from time to time and such interest shall accrue before as well as after any court Judgment which is entered against the Buyer.
- 4.2.5 Cease supply of further products, if payment has not been made within 15 days of the due date.
- 4.2.6 Recover from the Buyer all damages, expenses, legal fees (including but not limited to all fees payable by the Seller to a Solicitor) and costs of collection (including but not limited to all fees and commission actually or contingently payable to a mercantile agent) incurred by the Seller in exercising or attempting to exercise the Seller's rights in relation to these Terms and Conditions of Sale or howsoever otherwise incurred, in addition to all other remedies the Seller may have at law.
- 4.3 Apply all payments received from the Buyer in the consecutive priority of firstly satisfying any and all monies remaining unpaid in accordance with clauses 4.2.2 to 4.2.5 and thereafter in satisfaction of any and all other monies outstanding to the Seller.

4.4 Register a caveat against the title to all land or to charge any property or asset currently or in the future owned or partly owned by the Buyer, or upon which the Buyer is registered on the title as a proprietor, to secure the obligations of the Buyer under these Terms and Conditions of Sale and the Buyer further agrees and grants to the Seller the right to appoint a Receiver to sell any such land or property or asset for the benefit of the Seller in accordance with these Terms and Conditions of Sale.

5. PROPERTY AND RISK

5.1 Ownership in any or all goods delivered by the Seller to the Buyer will remain with the Seller until the price of those goods and all other monies remaining unpaid by the Buyer to the Seller have been paid in full, however the risk in any goods will transfer to the Buyer upon delivery to the Buyer or his agent or a carrier nominated by the Buyer. Until the Seller is paid in full for the goods the relationship of the Buyer to the Seller shall be fiduciary in respect of the goods such that the Buyer shall hold the goods as Bailee only for the Seller.

5.2 The Buyer may effect sale of the goods or part thereof in the usual course of business upon the conditions that:

5.2.1 Until sale of the goods occurs the Buyer shall store the goods separately from its own until ownership has manifested in the Buyer.

5.2.2 The Buyer holds all proceeds of sale relating to the Seller's goods on trust for the Seller.

5.2.3 The Buyer agrees that were the goods are sold to a third party prior to payment to the Seller the Buyer automatically assigns to the Seller its rights to recover payment from the third party of any outstanding moneys relating to the sale or disposal of the Seller's goods.

5.3 If the Seller's written demand for payment of the goods is unsatisfied the Buyer agrees and acknowledges the Seller will be entitled to forthwith enter any premises owned or occupied by the Buyer and the Buyer grants the right of such entry to the Seller to recover any goods which are the property of the Seller and which the Seller reasonably believes to be on such premises and for the Seller to exert such force as is necessary to gain entry to any such premises and the Buyer expressly indemnifies and saves harmless the Seller in relation to any loss or damages sustained as a result of any such entry or taking possession of the goods.

5.3 Where the goods the subject of any unpaid invoice are indistinguishable from goods previously sold by the Seller to the Buyer (due to not having a serial number or other identifying mark), the Seller shall be entitled to take possession of such quantity of indistinguishable goods from the Buyer as the Seller reasonably estimates in its sole and absolute discretion is necessary to satisfy the amount of the unpaid invoices.

6. DELIVERY

6.1 Unless otherwise stipulated in writing by the Seller, the Buyer shall be responsible for the cost of any delivery. If the Seller is requested to arrange for the delivery of goods beyond their usual business premises, the Buyer shall pay all delivery charges stipulated by the Seller. The Seller shall in all cases be entitled to choose the method of transport.

6.2 The Buyer shall provide reasonable and proper access to the site specified for delivery.

6.3 Where for any reason the time necessarily spent by the Seller in attempting to or effecting delivery exceeds 30 minutes the Buyer agrees to pay all costs and expenses of the Seller thereby incurred.

6.4 The Buyer shall be responsible for any damage whatsoever or howsoever caused in the course of delivery and shall indemnify the Seller in relation to every claim whatsoever which arises in relation thereto.

6.5 The Buyer authorises the Seller to subcontract delivery in its absolute discretion.

6.6 The Seller may unilaterally delay or suspend any delivery or part of a delivery for any period or cancel any agreement for sale or withdraw credit facilities to the Buyer at any time without notice and such action shall not constitute a breach of contract with the Buyer nor shall it affect any other provisions of any contract with the Buyer which are to the Seller's disadvantage or affect the Seller's rights under these Terms and Conditions of Sale or otherwise.

6.7 Where the Buyer or the Buyer's agent is not on site to accept delivery whether by the Supplier or the Supplier's agent, the Buyer expressly agrees and acknowledges the signature of the delivery driver denoting the time, date and place of delivery shall be deemed acceptance by the Buyer of the such delivery.

6.8 The Seller shall not be liable for any claim, loss or expense sustained or incurred by any person arising in any way as a result of any failure or delay in delivery of the goods or any part thereof and such failure or delay will not affect the Seller's rights under these Terms and Conditions of Sale or otherwise.

7. CLAIMS, RETURNS AND CANCELLATIONS

The responsibility rests with the Buyer to ensure thorough and careful inspection of the goods immediately upon delivery:

7.1 Disputed claims will not be accepted unless received by the Seller in writing within 14 days of the delivery date of the goods. Claims outside of this period will only be accepted at the absolute discretion of the Seller.

7.2 Goods will only be accepted for return if authorised in writing by a representative of the Seller prior to the return, must be freight prepaid by the Buyer, be in their original condition and packaging, quote the original Tax Invoice details, the name of the authorised representative of the Seller and the authorisation date.

7.3 Where goods which are not subject to a claim are authorised by the Seller for return or cancellation of an order, the Supplier in its absolute discretion reserves the right to charge the Buyer a handling fee representing 20% of the sale price of the goods.

7.4 Any variation or cancellation of an order must be approved in writing by the Seller.

8. TERMINATION

If the Buyer fails to comply with any of these Terms and Conditions of Sale or:

- 8.1 Being an individual commits any act of bankruptcy, or corporation passes a resolution for winding up or liquidation or,
- 8.2 Enters into any composition or arrangement with creditors or if an Administrator, Receiver or Manager is appointed over any property or assets or,
- 8.3 Becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, the Seller may in addition to exercising any of its rights against the Buyer, suspend any further deliveries and immediately recover possession of any products not paid for in full and sell them.

