



TERMS & CONDITIONS

IN CONSIDERATION OF Nexus Refrigeration & Airconditioning, A.B.N. 21 743 857 820, (hereinafter referred to as "the Company") providing Goods and/or Services to the party or parties (**hereinafter referred to as "the Customer"**) named on the invoice or Job Sheet annexed to these conditions, the Customer acknowledges and agrees:

- that these Terms and Conditions apply to and form part of any contract between the Company and may be amended or superseded from time to time by notice given by the Company by any means; and
- that these Terms and Conditions take precedence over any terms and conditions which may be contained in any document provided by the Customer.

"Goods and/or Services/ Goods / Services" shall mean all goods and/or services and/or intellectual property supplied by the Company to the Customer, or ordered by the Customer but not yet supplied, and includes goods described on any quotation, invoice, purchase order or any other document including any recommendations and advice.

"Price" shall mean the cost of the Goods as referred to in the Company's price lists, invoices, and/or arrangements and shall be subject to change from time to time without notice.

Payment

The Customer is required to pay all amounts for purchases, in full and without deduction, set-off withholding or counterclaim, no more than 30 days from the end of the month during which any given purchase is made. The Company may at its discretion apply any payments it receives from the Customer in and towards the satisfaction of any indebtedness of the Customer and it shall not be bound by any conditions or qualifications that the Customer may make in relation to payments made to the Company.

In the event of a dispute, the complete undisputed portion of the account must be paid in accordance with these Terms and Conditions.

The Customer acknowledges that where contracted Services to be carried out by the Company for the Customer, extend beyond the end of any given calendar month, then the Company reserves the right to render an invoice for progress claims which invoice shall be payable within seven (7) days of the end of such calendar month in which the progress claim is made.

If the Customer fails to promptly pay any moneys due and payable to the Company, notwithstanding any other rights and remedies available to the Company, the Company may consider such action to be breach of an essential term of these Terms and Conditions. In such an event the Company shall be entitled to do one or more of the following actions:

- (a) charge interest on amounts overdue from time to time from the Customer, at the penalty interest rate under the *Penalty Interest Rate Act 1983* (Vic) plus two (2) percent, from the due date until the date of payment; or
- (b) refuse to provide any further Goods and/or Services (whether or not the Company is to make any further deliveries of the Goods and/or Services), until satisfactory payment is received in full.

The Price of Goods and/or Services quoted by the Company is exclusive of GST. In addition to the price payable for the Goods and/or Services, the Customer must pay to the Company, on demand, the GST payable in respect of the supply of those Goods and/or Services. For the purposes of these Terms and Conditions of Sale, "GST" has the same meaning as that word is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Retention of Title, Risk and Right of Access

All legal and equitable title in all the Goods supplied shall remain vested in the Company and shall not pass to the Customer until all monies owing to the Company by the Customer together with all collection, repossession and / or legal costs incurred, have been paid in full.

While the Goods remain the property of the Company, the Customer agrees with the Company that:

- (a) the Customer holds the Goods as fiduciary bailee of the Company;
- (b) the Goods will be stored separately so that they are readily identifiable as the property of the Company;
- (c) the Customer will not dispose of the Goods except with the Company's prior written consent or in the ordinary course of the Customer's business;
- (d) the Customer will hold all proceeds, relating to the sale of the Company's Goods in a separate account on trust for the Company and will pay such monies immediately on request to the Company;
- (e) the Customer will not cause the Goods to lose their identifiable character or be intermingled with other goods, in any way, either by any process of its own or by a third party, except with the Company's prior written consent;
- (f) the money received for the sale of any intermingled goods, which contain the Goods of the Company, will be held in trust for the Company (to the maximum extent that such "trust" monies represent the total outstanding debt owed to the Company on all accounts by the Customer (and will pay such monies immediately on request to Company)).
- (g) the Customer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Company owes to the Customer;
- (h) the Customer cannot claim any lien over the Goods;
- (i) the Customer will not create any absolute or defeasible interest in the Goods in relation to any third party, except with the Company's prior written consent;
- (j) pending payment in full for all amounts owed by the Customer to the Company on all accounts, the Customer:
 - i. must not allow any person to have or acquire any security interest in the Goods;
 - ii. must insure the Goods for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Customer carries on business; and
 - iii. must not remove, deface or obliterate any identifying mark or number on any of the Goods.

In the event that the Customer defaults in the payment of any monies owing, the Company may, whilst it retains title to the Goods, at its absolute discretion and without further notice and prejudice to any other of its rights, demand the return of the Goods or re-take possession of the Goods from any site owned or controlled by the Customer, and the Customer grants the Company (or its duly appointed agent) an irrevocable licence to do so without any liability for any loss or damage suffered as a consequence of such entry or re-taking of possession. The Company and its employees (or its duly appointed agent) shall have the right to enter without notice upon the Customer's premises or any other premises where the Goods are known to be stored to repossess the Goods and the Customer shall grant reasonable access rights and the Company, its employees or agents shall be entitled to do all things required to secure repossession of the Goods.

The risk to the Goods immediately passes to the Customer upon the Goods departing from the Company's factory or upon delivery to the Customer or its agent or a carrier nominated by the Customer provided that if the Customer fails to accept delivery or requests a delay in delivery, risk in the Goods shall be borne by the Customer from the time of such failure or request (as the case may be).

PPSA

The Customer acknowledges that these Terms and Conditions represent a Security Agreement between the parties pursuant to the *Personal Property Security Act 2009* (**PPSA**).

Until title passes to the Customer, the Customer grants to the Company:

- (a) a PPSA purchase money security interest in the Goods and any proceeds of their sale; and
 - (b) charge over all of the present and after acquired property of the Customer,
- (collectively, **Security Interests**).

The Customer hereby consents to the Company recording the details of these Security Interests on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Company to effect such registration. The Customer must assist the Company to complete the registration of any financing statement in respect of the Goods, and will do all things and provide all information necessary to enable the Company to perfect the Company's Security Interests in the Goods and complete any financing change statement. The Customer waives any right or entitlement to receive notice of the registration of any Security Interest(s) created by this instrument on the Personal Property Securities Register. The costs of registering a financing statement will be paid by the Customer.

The Customer agrees not to do or permit anything to be done that may result in the Security Interests granted to the Company ranking in priority behind any other security interest (as defined in the PPSA). The Customer undertakes to:

- (a) not register a financing change statement or an amendment demand in relation to any security interest created by these Terms and Conditions without the prior written consent of the Company;

- (b) give not less than fourteen (14) days prior written notice of any proposed changes in name or any other change in Customer details.

The Customer agrees that nothing in sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA shall apply to these Terms and Conditions, or the security under these Terms and Conditions and to the extent permitted by the PPSA, agrees to waive and contract out of its rights to receive any notice or statement under sections:

- (a) 95 (notice of removal of an accession);
- (b) 118 (notice of decision to enforce security interest under land law);
- (c) 121(4) (enforcement of liquid assets – notice to grantor);
- (d) 123 (notice of seizure of collateral);
- (e) 130 (notice of disposal of collateral);
- (f) 132(3)(d) (statement of account following a disposal showing amounts paid to other secured parties);
- (g) 132(4) (statement of account if there is no disposal);
- (h) 157 (notice in relation to registration of events),

or otherwise. The parties also contract out of each other provision of Part 4.3 of the PPSA, under sections 115(7) and 116(2), but only to the extent that the provision impose obligations on the Company. The Customer will not disclose information of the kind mentioned in section 275(1) of the PPSA, unless required by law (other than section 275(1) of the PPSA).

Defects

The Customer shall inspect the Goods upon delivery and will, within 48 hours, notify the Company in writing of any defects, short deliveries or any failure to fulfill any quotation or order.

The Customer will, within a reasonable time following delivery, grant the Company access to the Goods in order to inspect for any alleged defects.

Should the Customer fail to notify the Company within the specified period then the Goods and/or Services shall be deemed to be in compliance with the order and free from any defect whatsoever.

Subject only to the operation of the *Consumer and Competition Act 2010* (Cth) (if applicable), the Company's liability in respect of alleged defective workmanship and/or defective parts, is limited to rectification, replacement or repair (as the case may be) of the Goods and/or Services. The Company shall not be liable for any other losses, damages or claim whatsoever, whether in tort contract or otherwise, arising directly or indirectly from Goods and/or Services supplied by the Company.

Warranties and Liability

To the maximum extent permitted by law, all express and implied warranties, guarantees and conditions under statute or general law as to merchantable quality, description, suitability or fitness of the Goods and Services for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded.

To the maximum extent permitted by law, the Company is not liable for and the Customer releases the Company from any claims arising from faulty and defective design of the Goods supplied unless such design has been wholly prepared by the Company at the request of the Customer and such claim has been specifically accepted by the Company in writing in accordance with the preceding paragraph "Defects".

The Company shall not be liable for any loss or damage (including consequential loss or damage) arising from delay in completing the Services or failure to complete the Services due to circumstances beyond its control. The liability of the Company to the Customer for any reason related to the performance of Goods under these Terms and Conditions shall be limited to the rectification, replacement or repair of the Goods or the amount paid or payable by the Customer in respect of the particular Goods.

Manufacturer's Warranty

- a) The Customer agrees that the Company is not the manufacturer of any Goods and the Company shall not be liable to any party as a manufacturer.
- b) Where applicable, the warranty in respect of the Goods shall be the current warranty provided by the manufacturer of the Goods and the Company's liability is limited to any express conditions as detailed and stipulated in the manufacturer's warranty and/or as contained on the "Warranty Card" supplied with the Goods.
- c) Where raw materials and parts are required to be purchased by the Company for the purpose of supplying the Goods and/or Services to the Customer, then the benefit of any warranties provided by the suppliers or manufacturer of such raw materials and component parts, (if any) shall to the extent possible, be passed on by

the Company to the Customer and where relevant, the Company shall use its best endeavours to assist the Customer in availing itself of such warranties.

Protection of Works and Safety of Personnel

The Customer is responsible for:

- a) the security and safety of the site at which the Goods and Services will be delivered;
- b) the absence of contamination on the site; and
- c) any loss or damage arising from a failure in whole or in part by the Customer to keep the site safe, secure and free from contamination, including but not limited to:
 - (i) loss of, or damage to, Goods due to theft, vandalism or fire;
 - (ii) loss of, or damage to, the Company's equipment or tools; and
 - (iii) injury to the Company's personnel.

Jurisdiction

These Terms and Conditions shall be governed by and construed in accordance with the laws of Victoria and, where applicable, the Commonwealth of Australia, and the Customer submits to the non-exclusive jurisdiction of the courts of Victoria.

General

The invalidity or unenforceability of any provision of these Terms and Conditions shall not affect the validity or enforceability of the remaining provisions.

Clerical errors are subject to correction and do not bind the Company.

Headings are for ease of reference only and do not form part, or affect the interpretation, of these Terms and Conditions.

The Customer acknowledges that all purchases are made relying solely upon the Customer's own skill and judgment. The Customer has, prior to signing of these Terms and Conditions, obtained independent legal and financial advice or had the opportunity to obtain such advice as to the Customer's obligations and the true meaning, nature and effect of these Terms and Conditions.