

## Terms and Conditions of Trade

### 1. Overview

1.1 Unless we vary these Terms in accordance with clause 22, these Terms apply in every contract for the supply of goods or services made between us as supplier and you as buyer. These Terms prevail over any terms put out by you, unless we agree in writing.

1.2 None of our employees, agents or contractors may vary or add to these Terms nor make any representations about the performance, specifications or fitness for purpose of our goods or services other than those specified in our authorised written material. All such unauthorised warranties and representations are expressly excluded.

### 2. Quotations

2.1 Prior to our receipt of your acceptance, our quotations are subject to change or withdrawal at any time by us in writing and are valid for 30 days from their date unless withdrawn or varied by us by notice in writing to you.

### 3. Orders

3.1 Orders given by you are subject to our acceptance and we may decline an order. You may not cancel an order, nor delay delivery once we accept your order unless we agree in writing.

### 4. Goods and Services

4.1 We may alter our range of goods or services on offer by notice in writing to you.

### 5. Prices

5.1 Prices quoted are for delivery ex-our factory and do not include handling or delivery charges. We will invoice all orders at our current prices, which we may alter by notice in writing to you.

5.2 Unless otherwise stated, all prices quoted by us are net, exclusive of Goods and Services Tax (**GST**). GST applies to all supplies of goods and services made by us and the amount payable by you will be increased by a percentage equal to the prevailing GST rate at the time of delivery of the goods or supply of the services (as the case may be).

### 6. Delivery/Attendance

6.1 Delivery or attendance times are best estimates only and we do not guarantee a particular delivery or attendance date or time. You are to arrange for insurance of the goods in transit for the full insurable value of the goods. If we are unable to deliver because of any causes beyond our control, we are not liable for any direct or consequential loss whatsoever. Time will under no circumstances be deemed of the essence and we will not be liable for any loss or damage suffered by you (or any other party) arising out of, or in relation to, a delay in delivery by us.

6.2 We will make goods available to you at our store or, at your request and expense, we will cause the goods to be delivered to your premises. If you do not specify a method of delivery, then we may decide the method but all carriers will be your agents only.

6.3 A claim for shortages in delivery must be in writing received by us within 14 days of dispatch from our store (including any claim in relation to the conditions of goods of delivery).

6.4 A signed delivery docket will be conclusive evidence of delivery of the goods.

### 7. Title and Risk

7.1 Risk in the goods passes to you upon delivery (including all risks associated with unloading) or upon title in the goods passing to you, whichever is the earlier.

7.2 The legal and equitable title to the goods will only be transferred from us to you when all moneys owing by you to us (whether pursuant to clause 8 of these Terms or otherwise) (**Amount Payable**) have been paid in full. Until the Amount Payable has been paid in full, you hold the goods as bailee for us and a fiduciary relationship exists between you and us.

7.3 Until the Amount Payable has been paid in full:

7.3.1 Unless otherwise notified in writing, you are authorised to sell the goods in the ordinary course of business.

7.3.2 After giving 48 hours' notice to you, we shall be entitled to enter your premises between 9am and 5pm to inspect the goods.

## Terms and Conditions of Trade

7.3.3 The goods shall be stored separately and in a manner to clearly identify us as the owner of the goods and enable them to be identified and cross-referenced to particular invoices issued by us.

7.3.4 The proceeds of any goods sold will held by you on trust for us, and must be in a separate account and must not be mixed with any other moneys, including your funds.

7.4 If payment of any Amount Payable is not made by the due date we shall be entitled to enter your premises at any time to do all things necessary in order to take possession of the goods, without being liable for trespass, conversion, any resulting damage or any other loss whatsoever. You shall be liable for all costs of whatsoever nature of and associated with the exercise of our rights under this clause, which shall be payable on demand.

7.5 You acknowledge that if the goods are mixed with or incorporated into, other products or items such that the goods are no longer separately identifiable, then we will be owner in common of the new product with you.

### 8. Payment

8.1 You must pay us the price of the goods or services on or before the due date shown on the invoice unless we have approved extended terms for payment. If payment is overdue, we may charge you interest at the rate of 3% higher than the maximum rate per annum then charged by our bank on overdrafts from the date of default until we receive payment.

8.2 We may grant you credit on the basis of a credit application form approved by us and completed by you (and/or such other documents as may be required by us). Where so granted, payment shall be made within 30 days of the date of our invoice.

8.3 If you do not pay us on time you are not entitled to use any of the credit facilities we extended to you until you make a new application for credit, which application may be refused. In addition, if payment is overdue we may cancel or suspend delivery of other goods or services yet to be delivered to you.

8.4 You may not deduct from the price any set off, counterclaim or other sum unless we agree in writing.

8.5 Payment is not deemed to be made until we are in receipt of the full purchase price, including any amount of GST and delivery costs, in cleared funds.

### 9. PPSA Security Interest

9.1 In this clause 9, the following terms have the same meaning given to them in the *Personal Property Securities Act 2009* (Cth) (**PPSA**):

9.1.1 proceeds;

9.1.2 purchase money security interest; and

9.1.3 security interest.

9.2 You grant to us a security interest in the goods to secure payment of the Amount Payable. The security interest:

9.2.1 extends to and continues in all proceeds, accessions and processed goods; and

9.2.2 is a purchase money security interest to the extent to which it secures payment of that part of the Amount Payable which comprises the aggregate unpaid purchase price of goods.

9.3 You must not do or permit anything to be done that may result in the purchase money security interest granted to us ranking in priority behind any other security interest.

9.4 You:

9.4.1 Waive your right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement relating to a security interest created under these Terms;

9.4.2 contract out of your rights to receive any other notice or statement under any other provision of the PPSA (including for the avoidance of doubt, any of the provisions specified in clause 9.5).

9.5 To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2),

## Terms and Conditions of Trade

129(3), 130, 132(3)(d), 132(4), 135, 142 and 143, which sections (or parts of sections) shall not apply.

### 10. Warranty

10.1 We warrant to you that the goods will, under proper use, be free from defects due solely to faulty workmanship and materials for a period of 12 months, unless otherwise stated, from the date of delivery to you (or in the case of installation, from the date of commissioning) to the extent that upon return to us (freight pre-paid) during that period of the goods or any part of the goods covered by this warranty we will, if such part is found by us to be so defective, at our option, repair or supply a replacement for the goods or such part.

10.2 Third party components will be subject to the manufacturer's normal warranty and are excluded from this warranty.

10.3 Second-hand goods carry no warranty on electric motors or against loss of refrigeration charge but carry a 3-month warranty on all labour and a 1-month warranty on all parts.

10.4 We warrant to you that our services will be provided using due care and skill and all labour and equipment for service work carries a 3-month warranty unless the equipment is third party equipment which carries the manufacturer's standard warranty.

10.5 This warranty excludes deficiencies caused by compliance with your instructions or damage due to normal wear and tear, misuse or neglect, excessive heating, mechanical vibration, overload or operation contrary to instructions for use. This warranty will also be excluded if the goods are not maintained and serviced by us or are not maintained and serviced in accordance with applicable manufacturer's instructions.

10.6 The warranty does not apply until such time as you have paid, without deduction, all monies then due and payable in respect of the goods or services in accordance with these Terms. Nevertheless, the warranty period commences as stated above upon delivery of the goods or performance of the services.

10.7 Where you are a "consumer" for the purposes of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (Australian Consumer Law), the following applies:

10.7.1 In order to claim under this warranty, you need to contact us on 1300 782 466 during the relevant warranty period, to arrange for our authorised representative to inspect the goods the subject of the warranty claim and to assess your claim. We will advise you in writing of our acceptance or rejection of your warranty claim within a reasonable period after receiving your claim, and where we agree to repair goods under this warranty, we will arrange to have the goods collected from your premises. Any expenses incurred by you in making a claim under this warranty (including without limitation costs of removing any goods) are at your sole expense. We will bear our own costs in relation to assessing any warranty claim made by you, including costs incurred in collecting the defective goods from your premises.

10.7.2 We will not be responsible for any damage or loss suffered by you (or any other party) arising out of or in relation to us complying with our obligations under this clause 10, including without limitation, any damage to other goods caused by our removal of the defective goods from your premises.

10.7.3 This warranty is provided to you in addition to other rights and remedies you have under any law in relation to the goods supplied.

10.7.4 Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

10.8 Except as provided in these Terms or as required by mandatory operation of law, all conditions or warranties express or implied in respect of the goods or any services supplied are excluded.



## Terms and Conditions of Trade

### 11. Liability

11.1 Where legislation, including without limitation the *Competition and Consumer Act 2010* (Cth) and equivalent State or Territory legislation, implies any warranty or guarantee in relation to the goods or services into these Terms (which cannot be excluded), to the extent permitted by law, our liability is limited (at our option) to:

11.1.1 In the case of goods:

- a) the replacement of the goods or the supply of equivalent goods;
- b) the repair of the goods;
- c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- d) the payment of the cost of having the goods repaired.

11.1.2 In the case of services:

- a) the supplying of the services again; or
- b) the payment of the cost of having the services supplied again.

11.2 Except where required by mandatory operation of law, we shall not be liable to you for any personal injury, indirect, special or consequential loss or damage (including without limitation loss of profits, loss of opportunity or business interruption, loss of value of intellectual property and loss or damage resulting from the loss or damage to goods other than the goods supplied) suffered by you or any other person arising out of or in relation to our supply of goods or services, whether in contract, tort (including negligence), under statute, in equity or otherwise.

### 12. Copyright

12.1 The copyright in all of our documents (including plans, illustrations, drawings and specifications furnished to you for the purposes of the contract) remain vested in us and neither they nor their contents shall be used without our express consent for any purpose other than that for which they were furnished.

### 13. Other Intellectual Property

13.1 Unless otherwise agreed in writing by us, all right title and interest in all inventions and/or discoveries made by us in providing any goods or services shall be owned by us provided that you will have a non-exclusive free and continuous licence from us to use the same for the purpose of the project in respect of which the goods or services are provided. If we terminate the relevant contract by reason of your breach, such licence shall automatically cease.

### 14. Confidentiality

14.1 Unless otherwise agreed in writing, each of us must both keep confidential all information and materials of the other which are designated by the other in writing or orally (and confirmed in writing within 30 days) as being confidential.

### 15. Specifications

15.1 Where we, at your request, manufacture goods to the design, specifications, or in compliance with your suggestions as to design, materials, method of construction or otherwise, we will not assume any responsibility or liability for the practicability or performance of such designs, specifications or recommendations and will not assume any liability whatsoever for any loss or damage caused to you or any other person as a result of defects or inaccuracies caused by reliance on such designs, specifications or recommendations.

### 16. Returns

16.1 You may return goods to us only with our prior written consent at your risk and expense and only if returned within 15 days of delivery. We will credit returns only where goods are received back by us in good condition. If you return goods to us because of your ordering mistake or for some reason other than the goods being defective, we may charge you a surcharge of 15% of the price of the goods.

## Terms and Conditions of Trade

### 17. Remedies

17.1 If you breach any contract with us, or if you are an individual and commit an act of bankruptcy under the *Bankruptcy Act 1966* (Cth), or if you are a company and become an externally administered body corporate under the *Corporations Act 2001* (Cth), we may (in addition to our other rights) suspend or terminate any other contract with you by giving written notice to you. You are still to pay us for goods or services already delivered under the contract in question. In addition to those rights, if you default or become insolvent we reserve our rights as seller under the Sale of Goods Act of the relevant jurisdiction.

### 18. Force Majeure

18.1 A party is not liable for any failure to perform this Agreement if performance is delayed, or prevented by any circumstance not within the direct control of the party and without its fault or negligence, provided that such party promptly gives notice to the other party and endeavours to remedy the cause thereof with all due diligence.

### 19. Assignment

19.1 Neither party shall assign or charge its benefits and obligations under these Terms without the prior written consent of the other party and the undertaking of the assignee in writing to be bound by these Terms. These Terms bind the parties and their respective successors and permitted assigns.

### 20. Governing Law

20.1 A contract of supply is governed by the laws in force in the State or Territory in which delivery of goods or services is made and you must submit to the non-exclusive jurisdiction of the courts of that State or Territory

### 21. Acknowledgment

21.1 No failure by you to acknowledge these Terms, and no supply of goods or services in such circumstances, shall raise any implication that these Terms have not been incorporated into, or have been waived in any way in respect of, the contract for supply of the goods or services. By placing an order with us you are deemed to have accepted these Terms.

### 22. Variation

22.1 We may at any time vary these Terms and may notify you of these changes or provide any other notice under or in connection with these Terms by email, facsimile, post or, in the case of a variation of these Terms, by publishing the revised Terms or notice on our website. If we publish revised Terms on our website, we may (but are not obliged to) notify you that we have done so on any invoice or order acknowledgement.

22.2 You agree to regularly check our website for any notices of changes to these Terms.

22.3 Any variation to these Terms will apply to all orders placed after the updated Terms have been posted on our website or otherwise notified to you in accordance with this clause.

### 23. Waiver

23.1 If we elect not to exercise any of our rights arising as a result of a breach of these Terms this election will not constitute a waiver of any rights relating to any subsequent or other breach.

### 24. Severability

24.1 The whole or any part of a clause of these Terms is capable of severance without affecting the rest of these Terms.

### 25. Miscellaneous

25.1 These Terms and Conditions shall be governed by the laws of the State of Victoria and both parties submit to the non-exclusive jurisdiction of the courts of or exercising jurisdiction of that State and Industrial Cooling Services Pty Ltd and the Supplier waive, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.