

1. Acceptance and Term

- 1.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by this Agreement on the earlier of the date on which, having a received a copy of these Terms:
- (a) the Customer applies for a Credit Account with the Seller;
 - (b) the Customer enters into any Sale Contract;
 - (c) the Customer provides the Seller with notice in writing that it accepts these Terms;
 - (d) the Customer instructs the Seller to commence any Services or provision any Goods, and applies to all Goods and Services the Seller provides to the Customer until terminated.
- 1.2 Once accepted, this Agreement will continue until the later of the date on which:
- (a) all Sales Contracts have either expired, been completed, or otherwise been validly terminated; or
 - (b) these Terms (and all Sales Contracts to which they apply) are terminated in accordance with the provisions herein.

2. Interaction of Documents

- 2.1 The Proposal constitutes an offer to the Customer from the Seller to provide the Scope of Works for the applicable Price and is valid for the Validity Period set out in the Proposal (or otherwise for 30 days from the date of the Proposal).
- 2.2 The Price set out in the Proposal is based on the Customer accepting the Proposal as is. If the Customer requests changes to the Proposal, the Seller reserves the right to modify the terms of the Proposal, including the Scope of Work and/or the applicable Price.
- 2.3 If the offer is not accepted within the appropriate time frame (as set out in clause 2.1), the Seller reserves the right to modify the terms of the Proposal, including the Scope of Work and/or the applicable Price.
- 2.4 If the offer is accepted within the Validity Period, the accepted Proposal (including any written variations to the Proposal agreed between the parties) becomes a Sale Contract.
- 2.5 The parties may agree to a Sales Contract from time to time, setting out the relevant Goods or Services and any special conditions. Each Sales Contract is subject to these Terms.
- 2.6 Each Sales Contract constitutes a separate agreement and applies for the duration of these Terms. The expiry or termination of any Sales Contract does not automatically affect the validity of these Terms or any other Sales Contract then on foot.
- 2.7 To the extent that any conflict exists, the various documents comprising the Agreement will take precedence in the following order (from highest to lowest priority):
- (a) any variation to the Terms or any Sales Contract agreed in writing between the parties; then
 - (b) in order of commencement date from the most recent:
 - (i) any appendix or schedule to any Sales Contract; and
 - (ii) the terms or special conditions of any Sales Contract; then
 - (c) these Terms; then
 - (d) in order of date from the most recent, the terms of any Proposal and any agreed variations to a Proposal; then
 - (e) any policy or procedure of the Seller disclosed to the Customer (not forming part of a Sales Contract).

3. Audit and Initial Designs

- 3.1 Prior to providing any quotation to the Customer or the provision of any goods or services (whether or not a Proposal has been provided to the Customer), the Seller reserves the right to conduct an audit of any site relevant to the Customer's request for the Seller to provide goods or services. Provision of any goods and services is subject to the Seller's reasonable satisfaction that any such site meets the Seller's requirements for providing goods or services.
- 3.2 The Seller reserves the right to charge a fee for conducting an audit of any relevant site which the Seller will notify to the Customer prior to undertaking the audit. The Customer agrees to pay any audit fee notified to it by the Seller if it instructs the Seller to undertake the audit.
- 3.3 If the Seller notifies the Customer that the site does not meet its requirements and the Seller cannot provide any goods or services to the site, either party may terminate this agreement without penalty, except that the fee under clause 3.2 becomes immediately due and payable.
- 3.4 If the Seller notifies the Customer that the site does meet its requirements and the Customer subsequently accepts any related Proposal, the Seller may (in its absolute discretion) waive any audit fees applicable under clause 3.2.
- 3.5 In developing a Proposal, the Seller may be required to develop drawings and/or designs for the Customer. The Seller reserves the right to charge a fee for developing such drawings and/or designs which the Seller will notify to the Customer prior to developing them. Upon acceptance of the Proposal by the Customer, the Seller may (in its absolute discretion) waive any development

fees due under this clause 3.5. In the event that the Customer does not accept the Proposal, the development fees become immediately due and payable.

4. Services and Scope of Works

- 4.1 The Seller will provide the Services specified in the relevant Scope of Works in accordance with these Terms, subject to the Specific Exclusions.
- 4.2 Where the Services cannot commence until after delivery of Goods, and subject to clause 8, it is the Seller's responsibility to ensure that the Services commence as soon as reasonably practicable.
- 4.3 Unless otherwise specified in a Proposal or Sales Contract, all equipment, accessories, and materials used by the Seller in carrying out the Services will be the relevant manufacturer's default or standard option. The Customer may request that the Seller use upgraded options, or modify or alter the default or standard option to suit their requirements, either prior to accepting a Proposal, or after entering into a Sales Contract subject to clause 4.4.
- 4.4 The Customer (or its agent) may request changes to the Scope of Works and the Seller will:
- (a) make reasonable efforts to accommodate the Customer's request, but is not obliged to accept the changes; and
 - (b) advise the Customer of any additional costs and changes to delivery schedules for implementing the changes.
- 4.5 If the Customer accepts the additional costs and delivery schedule changes for implementing the requested changes, the Seller will invoice the Customer for the additional costs, payable in full at the time of their completion.
- 4.6 If the Scope of Works set out in the Sales Contract needs to be amended, or if the Seller incurs any cost because of any of the following, the Seller reserves its rights to amend the Price and any delivery schedules to cater for any changes required or any costs incurred: any unforeseen circumstances such as poor weather conditions; limitations to accessing the site or excessive waiting time on site; a change to the installation site; availability of machinery; safety considerations; lack of power being provided by the Customer or any third party; prerequisite work by any third party not being completed; or incorrect information provided by the Customer and/or the Customer's agent.
- 4.7 If the Seller amends the Price to take account of anything set out in clause 4.6 above, the amendments will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.8 The Customer may request, and the Seller may at its sole discretion provide, Out of Scope Works. The same standards, warranties, and indemnities apply to Out of Scope Works. The Seller will charge Out of Scope Fees for any Out of Scope Works it provides.
- 4.9 The Seller reserves its right to charge a surcharge for Services which the Customer requests to be performed urgently or outside Business Hours.
- 4.10 The Seller reserves its right to charge a call-out fee for services requiring the Seller to travel to the Customer's site or another site nominated by the Customer. Any call-out fee will be notified to the Customer upon the Customer requesting any services to which a call out fee applies.
- 4.11 The Seller may appoint employees or agents to provide all or part of the Services without prior consent from the Customer, and such entities are bound by the same obligations as the Seller. It is the Seller's responsibility to ensure such entities comply with this Agreement.

5. Goods

- 5.1 Upon receipt of the Customer's order for Goods, the Seller may at its discretion, delay ordering Goods from its upstream suppliers, or delay shipment or delivery to the Customer, until the Seller has received payment for the Goods in full. The Seller will notify the Customer as soon as reasonably practicable if it requires payment in full prior to ordering Goods.
- 5.2 The Seller reserves its right not to order Goods from its upstream suppliers without confirmation from the Customer that the order is to be placed. The Customer acknowledges that if it does not respond to the Seller's request for confirmation, that delivery of the Goods may be delayed. The Seller is not liable for any loss or damage to the Customer because of the Customer's lack of response or delayed response under this clause.
- 5.3 If any Goods are not available at the time of ordering, and are not expected to be available at a future date, the Seller reserves the right to substitute equivalent goods for those originally ordered.
- 5.4 If any Goods are not available at the time of ordering but are expected to be available at a future date the Seller reserves the right to put the Goods on back order. If the Goods do not become available within a reasonable period of time, the Customer has the right to cancel the order for those Goods under clause 18.3(a).
- 5.5 The Seller may revise the Price related to substituted Goods under clause 5.3 or Goods placed on back order under clause 5.4 by reasonable notice to the Customer, as necessary to cater for price increases imposed by upstream suppliers, price differences for substituted Goods, or exchange rate fluctuations where Goods are sourced from outside Australia.

6. Customer Obligations

- 6.1 The Customer agrees to provide all necessary materials, equipment, or information necessary for the Seller to provide the Goods and/or Services.
- 6.2 The Customer must give the Seller not less than twenty-eight (28) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer is liable for any loss or damage incurred by the Seller as a result of the Customer's failure to comply with this clause.
- 6.3 The Customer must ensure that the Seller, its employees, contractors, and agents (as applicable) have clear and free access to the work site at all times to enable them to undertake the works. The Seller is not liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted, paved or grassed areas, ceiling tiles and panels, face brickwork and rendered masonry services) unless due to the negligence of the Seller.
- 6.4 The Customer warrants that it has all necessary rights to permit and authorise the Seller to provide the Goods and Services, and that providing the Goods and Services in accordance with its directions will not cause the Seller to contravene applicable laws.

7. Price and Payment

- 7.1 The Customer must pay the Seller the Price as and when set out in the Sales Contract, and as varied under clauses 4.4 to 4.7 or 5.5. The Seller will issue the Customer with a tax invoice for the Price.
- 7.2 At the Seller's sole discretion, a non-refundable deposit may be required prior to ordering or delivering any Goods or commencing any Services. This deposit may be calculated as a fixed amount or a percentage of the Price, and will be stipulated in the Proposal or otherwise prior to the Seller providing any Goods or Services. The Seller will invoice the Customer for the deposit and will not commence providing any Goods or Services until it has received the deposit in cleared funds.
- 7.3 Where Services are provided and invoiced on hourly rates, the Seller will provide to the Customer completed time sheets in addition to the invoice for Services.
- 7.4 In addition to the Price, the Customer must pay the following:
- (a) any Out of Scope Fees for Out of Scope Works requested and performed under clause 4.8;
 - (b) any surcharges for Services requested and performed under clause 4.9;
 - (c) where pre-agreed, any expenses we incur on your behalf in the course of providing the Goods or Services, at cost plus 50% (or another Materials Surcharge specified in the Sales Contract);
 - (d) any delivery fees incurred under clause 4.10;
 - (e) any service call-out fee incurred under clause 4.10. Where a service call-out fee is applicable under clause 4.10 and the Customer cancels the service call-out in writing within two (2) business days of the relevant services commencing, the Seller reserves its right to charge an administration fee for the late cancellation in accordance with clause 18.4. The Seller will invoice the Customer for the administration fee which the Customer must pay; and
 - (f) any costs related to the discovery of asbestos or its removal under clause 9.5; and
 - (g) any fees for the return of non-defective Goods incurred under clause 0.
- 7.5 Time for payment for the Goods and Services being of the essence, and subject to the terms of any Credit Account Arrangement between the parties, the Price will be payable by the Customer on the date/s determined by the Seller, which may be:
- (a) on delivery of the Goods and Services;
 - (b) before delivery of the Goods and Services;
 - (c) by way of instalments/progress payments in accordance with the Seller's payment schedule as set out in the Sale Contract;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Seller.
- 7.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or credit card, excluding American Express and Diners, or by any other method as agreed to between the Customer and the Seller. The Seller reserves its right to pass on to the Customer any surcharge payable by the Seller for accepting the relevant payment method.
- 7.7 In the event that payment is to be made by a personal cheque, the Customer agrees that any such payment must be made with sufficient time for clearance of the cheque (cleared funds) in line with the payment timeframe as stated on the invoice. If for any reason the Customer does not comply with this clause the Customer accepts that the Seller reserves the right to enforce clause 7.13 (including but not limited to the charging of an administration fee).
- 7.8 The Customer is responsible for and must reimburse the Seller for any transaction, processing, dishonour, or charge-back fees issued by a financial institution or payment gateway in the course of making payment.

- 7.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods or Services. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7.10 If the Customer reasonably believes that an invoice contains an error, and wishes to dispute that invoice, the Customer must:
- (a) notify the Seller within 14 days of receiving the invoice, and in any event before the due date of the invoice;
 - (b) pay all undisputed fees on the invoice; and
 - (c) provide detailed information about any disputed fees.
- The Seller will not suspend or terminate any Services for non-payment of the disputed fees while the dispute is being investigated.
- 7.11 For the sake of clarity, if the Customer does not dispute an invoice under clause 7.10 within 14 days of receiving the invoice, the Customer is deemed to have accepted the invoice and may not raise a dispute in relation to it under clause 7.10.
- 7.12 The Customer is not entitled to withhold payment of any invoice because any invoice or any part of any invoice is in dispute.
- 7.13 If the Customer fails to pay any invoice by the due date, then without prejudice to the Seller's other rights or remedies, until payment is made in full (including for any accrued interest):
- (a) the Seller reserves its right to:
 - (i) charge for interest on all overdue amounts at a rate set out in the relevant Sales Contract (or otherwise at 2.5%) per calendar month (and at the Seller's sole discretion such interest will compound monthly at such a rate) after as well as before any judgment;
 - (ii) immediately suspend the supply of any or all Goods and Services under this Agreement;
 - (iii) postpone any delivery or commencement date;
 - (iv) retain a lien over all equipment, materials, data, and work in progress, including those owned by the Customer in the Seller's possession and control; and
 - (b) the Customer is liable by way of liquidated damages for all amounts payable under this clause plus all costs of debt collection and enforcement (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).

8. Delivery and Acceptance

- 8.1 Unless expressly stated in the Scope of Works, any delivery dates or Service timelines provided by the Seller are a guide only and the Seller does not guarantee any fixed deadlines for the commencement of Services or the delivery of Goods or Services. The Customer must accept the delivery of Goods and Services even if late and the Seller will not be liable for any loss or damage incurred by the Customer as a result of late delivery (except where the late delivery is caused by the Seller's gross negligence or the Seller acting in bad faith). For the sake of clarity, delivery of Services means the completion of Services.
- 8.2 The Seller is not responsible for delays in delivery of Goods or Services caused by any of the following: the Customer's delay in providing the Seller with instructions, access, or equipment and materials necessary to undertake the Services or deliver the Goods; the delays, action or inaction of any third party (including the Seller's contractors); the delays, action, operation, inaction, or failure of any third party service or equipment; changes in the Scope of Works (whether requested by the Customer, or required to cater for changes as per clause 4.6); any Force Majeure Event; or the Seller exercising its rights under clause 18.1, and if any of the preceding events cause a delay, the Seller may, by written notice to the Customer, extend any delivery date by the same length of time or any greater period as the Seller deems reasonably necessary.
- 8.3 Where the Services cannot commence until after delivery of Goods, the Services commencement date will be delayed and/or the completion date extended by whatever time is reasonable due to any circumstances outside of the Seller's control, including but not limited to the Customer or its agent failing to make any necessary decision, failing to have the site ready for the Services, or failing to notify the Seller that the site is ready for the Services.
- 8.4 Delivery of Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Seller's address; or
 - (b) the Goods are delivered to the Customer's nominated address even if the Customer is not present at the address. Goods may be delivered to the Customer by the Seller, a carrier nominated by the Seller, or by the manufacturer/importer of the Goods.
- 8.5 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged, or the Seller cannot effect

- delivery due to the installation site not being ready, then the Seller will arrange for the Goods to be stored and:
- (a) provided that the Goods are stored in an approved location, clearly marked for identification, adequately protected, and insured against loss and damage, the Customer must pay for the Goods as if they had been delivered;
 - (b) the Seller is entitled to charge a reasonable fee for storing the Goods and arranging for redelivery when appropriate; and
 - (c) the Seller reserves the right to claim for Goods stored, and will provide insurance certificates for that purpose.
- 8.6 The Seller may deliver the Goods in separate instalments. Each separate instalment will be invoiced and paid in accordance with the provisions in this Agreement.
- 8.7 The Customer acknowledges that fees for delivery of Goods may be applicable in addition to the Price, and that such fees are payable in full prior to delivery.
- 8.8 Upon delivery of a Good or completion of a Service (**Deliverable**), it is the Customer's responsibility to review and test the Deliverable to confirm it fulfils the Scope of Works and meets any agreed specifications.
- 8.9 The Customer may give the Seller written notice within 5 days of delivery if it considers that the Deliverable contains a defect, clearly identifying the ways in which it does not meet the agreed Scope of Works. The Customer must allow the Seller to inspect the Deliverables, and if the Seller determines that the defect is one which is the Seller's responsibility, it will then correct the identified defects to meet the agreed specifications, and re-present the Deliverable to the Seller for acceptance within 14 days (or other period agreed between the parties). The parties will repeat the process set out in this clause until the Deliverable meets the agreed specifications.
- 8.10 The Deliverable is deemed to be accepted if the Customer confirms that it accepts the Deliverable, or if the Seller does not receive a written notice under clause 8.9 within 5 days.
- 8.11 The parties acknowledge that delayed acceptance of a Deliverable will impact upon the delivery timeframe of all future Deliverables. As such, deadlines for all Deliverables will be extended by the same duration as final acceptance is delayed.
- 8.12 Any changes the Customer requests to a Deliverable once it has been deemed accepted will be treated as Out-of-Scope Work, and the Seller reserves its right to charge Out-of-Scope Fees to that work.
- 9. Risk**
- 9.1 Unless otherwise agreed between the parties, the Customer bears all risk of damage to or loss of the Goods from the time the Goods are dispatched from the Seller's offices (or any other site under the Seller's control), the supplier, or the manufacturer/importer, and the Customer must insure the Goods for transit.
- 9.2 If any of the Goods are damaged or destroyed at any time prior to ownership passing to the Customer (even if risk has passed to the Customer under clause 9.1), the Seller is entitled to receive all insurance proceeds payable for the Goods to offset against the amount the Customer owes the Seller for the Goods. The production of these Terms 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.
- 9.3 Where the Seller is required to install the Goods, the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto. The Seller is not liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 9.4 Whilst the Seller will take all due care to prevent any damage to the Customer's existing tin/colourbond or tiled roof during the performance of the Services, subject to clause 14, the Seller does not accept liability in the event of any damage caused to the Customer's roof. However, the Seller may offer to repair or replace any such damage, provided the Customer has available the necessary materials, at the time of installation.
- 9.5 In the event that the Seller discovers asbestos/hazardous materials whilst undertaking any works the Seller will immediately advise the Customer of the same and is entitled to suspend the Services pending a risk assessment in relation to those materials. The Customer will be liable for all additional costs (howsoever arising) incurred by the Seller as a result of the discovery of asbestos/hazardous materials and/or any suspension of works in relation thereto.
- 9.6 The Seller is not responsible for the removal of rubbish from or clean-up of the building/constructions site/s. This is the responsibility of the Customer or the Customer's agent.
- 10. Air Conditioning Risk**
- 10.1 Whilst the final location of the condensing unit is at the discretion of the Customer, a charge will apply as a variation as per clause 4.6 if the Customer requests the unit to not be located adjacent to the external wall, due to the underground piping required.

- 10.2 The final location of the wall, window or floor unit must be determined on site by the Customer.
- 10.3 The Seller will upon installation ensure that all installed Goods meet current industry standards applicable to noise levels, however the Seller cannot guarantee that noise levels will remain constant post installation as the Goods may be impacted by many factors such as the weather, lack of maintenance, tampering etc. Accordingly the Seller offers no warranty in regards to noise levels post installation unless it is evident that there is inherent fault in the Goods or that the installation process was defective.
- 10.4 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Customer will be responsible for any and all costs involved.
- 10.5 The Customer acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 10.6 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Customer, then the Customer agrees to notify the Seller immediately upon any proposed changes. The Customer agrees to indemnify the Seller against any additional costs incurred with such a relocation of electrical wiring. All such variances will be invoiced in accordance with clause 4.7.

11. Title

- 11.1 The Seller and the Customer agree that ownership of the Goods will not pass until:
- (a) the Customer has paid the Seller all amounts owing to the Seller relevant to the Goods; and
 - (b) the Customer has met all of its other obligations to the Seller.
- 11.2 Receipt by the Seller of any form of payment other than cash is not deemed to be payment until that form of payment has been honoured, cleared, or recognised.
- 11.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 11.1 that the Customer is only a bailee of the Goods and must return the Goods to the Seller on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand;
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;
 - (e) the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods without prejudice or penalty to the Seller;
 - (f) the Seller may recover possession of any Goods in transit whether or not delivery has occurred without prejudice or penalty to the Seller;
 - (g) the Customer must not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller; and
 - (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

12. Personal Property Securities Act 2009 ("PPSA")

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest have the meaning given to them by the PPSA.
- 12.2 Upon assenting to these Terms the Customer acknowledges and agrees that this Agreement constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and Services that have previously been supplied and that will be supplied in the future by the Seller to the Customer.
- 12.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to;
 - (b) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (c) register any other document required to be registered by the PPSA; or
 - (d) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
 - (e) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods and Services charged thereby;
 - (f) not register a financing change statement in respect of a security interest without the prior written consent of the Seller;

- (g) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and Services in favour of a third party without the prior written consent of the Seller;
 - (h) immediately advise the Seller of any material change in its business practices of selling the Goods and Services which would result in a change in the nature of proceeds derived from such sales.
- 12.4 The Seller and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by the Seller, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Customer must unconditionally ratify any actions taken by the Seller under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

- 13.1 In consideration of the Seller agreeing to supply the Goods and Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 13.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

14. Defects, Warranties, and Returns

- 14.1 If a Warranty Period is specified in a Sales Contract, then subject to clause 14.3 the Warranty Period applies to the Seller's installation services from the date of acceptance of the installation services under clauses 8.8 to 8.10.
- 14.2 If within the Warranty Period, the Customer discover a defect in the installation services, the Customer may give the Seller a written notice to rectify the defect, and the Seller will rectify the defect if the Seller determines that the notified defect was directly or indirectly related to their provision of services and not any other cause.
- 14.3 The warranty over installation services set out in clauses 14.1 and 14.2 above does not apply where this Agreement is terminated by the Seller under clauses 18.1 or 18.2 and is subject to the Seller having received full payment for the installation services and any other related Goods and Services.
- 14.4 Where applicable, and unless otherwise stated in a Sales Contract, all Goods and associated materials are covered by the manufacturer's or importer's warranty. The Customer has the right to contact the manufacturer or importer directly in relation to a warranty claim for Goods and associated materials to which a manufacturer's or importer's warranty applies.
- 14.5 Under applicable State, Territory and Commonwealth Law (including, without limitation the *Competition and Consumer Act 2010* (Cth) (CCA)), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into this Agreement and cannot be excluded by contract (**Non-Excluded Guarantees**).
- 14.6 The Seller acknowledges that nothing in this Agreement excludes, restricts, or modifies or has the effect of excluding, restricting, or modifying the Non-Excluded Guarantees.
- 14.7 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations under this Agreement including but not limited to the quality or suitability of the Goods or Services. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.8 If the Customer is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.9 If the Customer is not a consumer within the meaning of the CCA:
- (a) the Seller's liability, and the liability of the Seller's Indemnified Officers is:
 - (i) limited to the value of any express warranty or warranty card provided to the Customer by the Seller at the Seller's sole discretion;
 - (ii) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods;
 - (iii) otherwise negated absolutely; and
 - (b) indirect, special, pure economic, or Consequential Loss (whether arising under contract or tort) are expressly excluded under this Agreement.

- 14.10 If the Seller is required to replace the Goods or resupply the Services under this clause or the CCA, but is unable to do so, the Seller may refund any money the Customer has paid for the Goods or Services.

14.11 Subject to this clause 14, returns of defective Goods will only be accepted provided that:

- (a) the Customer has complied with the provisions of clauses 8.8 to 8.9; and
 - (b) the Seller has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered to the Customer as is possible.
- 14.12 Notwithstanding clauses 8.8 to 8.9 and clauses 14.5 to 14.11 but subject to the CCA, the Seller is not liable for any defect or damage in any Goods which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by the Seller;
 - (e) fair wear and tear, any accident, or act of God.

14.13 The Seller may in its absolute discretion accept non-defective Goods for return or exchange. To request an exchange or refund for non-defective Goods, the Customer must deliver the Goods back to the Seller in good condition. The Seller will then inspect the Goods and may in its absolute discretion and subject to clause 0:

- (a) offer a full or partial refund or an exchange;
- (b) return the Goods to the Seller's supplier for their inspection and pass on any full or partial refund from the supplier; or
- (c) refuse to accept the returned Goods and notify the Customer that they must arrange to have the Goods returned to them.

14.14 The Seller reserves its rights to charge a fee for handling any non-defective returns under clause 0 of up to 15% of the value of the returned Goods plus any freight costs. The Seller further reserves its rights to deduct this fee from any monies it offers the Customer under clauses 0 and 0.

14.15 Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.

14.16 Despite any other provision to the contrary, the Seller's total liability and the total liability of its Indemnified Officers in connection with this Agreement whether under contract or tort, will not in any circumstances exceed the maximum value equal to the total fees received by the Seller from the Customer under this Agreement.

15. Indemnity

- 15.1 The Customer agrees to release and hold harmless the Seller and its Indemnified Officers against any Claim or Liability arising from or in relation to: the Seller exercising its rights under clause 7.13; any delay in delivery of Goods or Services or commencement of Services for any reason contemplated under clauses 8.2 or 8.3; any defect in a Deliverable which the Customer should reasonably have identified in line with its obligations under clause 8.8; the Seller exercising its rights under clause 18; the acts or omissions of third parties; the Seller's reasonable actions in denying anyone access to any Goods or Services, including for security reasons or non-payment; or any cause independent of human control that occurred after the Goods or Services were delivered, whether any directly or indirectly arising in connection with the Goods or Services, even if the Seller knew or should have known about the possibility of such loss and damage.
- 15.2 The Customer indemnifies the Seller for any reasonable legal expenses the Seller incurs as a result of the Customer's breach of this Agreement, including expenses for enforcing payment, on a solicitor and own client basis.

16. Intellectual Property

- 16.1 Where the Seller has designed, drawn, or developed Goods for the Customer, then the intellectual property rights in any designs, drawings, and documents vest in the Seller upon creation. Upon payment of all relevant fees for Goods and Services associated with the designs, drawings, or documents, the Customer is granted a non-exclusive and perpetual licence to the Seller's intellectual property rights in such designs, drawings, and documents strictly for the purpose for which they were created.
- 16.2 The Customer warrants that all designs, specifications, or instructions given to the Seller will not cause the Seller to infringe any third party intellectual property rights in the execution of the Customer's order and the Customer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

16.3 The Seller may use any documents, designs, drawings, or Goods the Seller has developed in the course of providing the Goods or Services for the purposes of marketing, promotion, or entry into any competition.

17. Confidentiality

17.1 The recipient of any Confidential Information must keep such information secret and confidential and must not disclose it to any third party without written consent of the disclosing party. The recipient of any Confidential Information must take or cause to be taken such reasonable precautions as may be necessary to maintain secrecy and confidentiality and to prevent disclosure, including obtaining confidentiality agreements from its employees, agents, and other contractors.

17.2 Despite clause 17.1, either party may use or disclose Confidential Information strictly to the extent necessary to carry out its obligations under this Agreement, comply with any law, binding directive of a regulator or a court order, comply with the listing rules of any stock exchange on which its securities are listed, or obtain professional advice where the advisors agree to be bound by the same obligation of confidentiality.

18. Suspension and Termination

18.1 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) under this Agreement the Seller may suspend or terminate the supply of Goods or Services under any or all Sales Contracts.

18.2 The Seller may immediately by written notice to the Customer cancel all or any part of any Sales Contract (and if all, these Terms will also be terminated) if:

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors;
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer; or
- (d) the Customer is guilty of dishonesty, serious misconduct, or serious neglect of duty.

18.3 Either party may for any reason by 30 days' written notice to the other party:

- (a) cancel any one or more Goods or Services under any one or more Sales Contracts, subject to clause 18.6;
 - (b) terminate any one or more Sales Contracts in their entirety; or
 - (c) terminate these Terms;
- but in the case of clause 18.3(c), the termination date of these Terms will be the date on which every Sales Contract between the parties has either expired or been validly terminated.

18.4 If the Customer exercises its rights under clause 18, then in addition to any other rights the parties may have (including those under clause 18.5), the Customer is liable for any and all loss incurred (whether direct or indirect) by the Seller as a result of the cancellation or termination (including, but not limited to, any loss of profits).

18.5 If either party exercises its rights under this clause 18, then in addition to any other rights the parties may have (including those under clause 18.4):

- (a) the Seller may issue an invoice for any Goods or Services delivered and not previously invoiced;
- (b) the Customer must pay all outstanding invoices whether or not due;
- (c) no licence is created under clause 16.1 until all outstanding invoices are paid (including any invoice issued under clause 18.5(a));
- (d) no Installation Warranty takes effect until all outstanding invoices in relation to the installation services are paid (including any relevant invoice issued under clause 18.5(a));
- (e) the Seller retains a lien over all Goods, data, materials, and work in progress until all outstanding invoices are paid (including any invoice issued under clause 18.5(a));
- (f) where the Customer has paid in advance for any Services, and except where the Seller has exercised its rights under clauses 18.1 or 18.2, the Seller will refund to the Customer any unused portion of fees the Customer has paid to the Seller for those Services;
- (g) for Goods the Seller has not yet ordered on the Customer's behalf, the Seller will either (as applicable):
 - (i) refund any fees related to those Goods which the Seller has received from the Customer for those Goods; or
 - (ii) cancel any invoice the Seller has issued for the Goods;
- (h) for Goods the Seller has ordered on the Customer's behalf but which have not yet been delivered to the Customer:
 - (i) where the Seller is able to cancel the order for any Goods with their suppliers, the Seller will either:
 - (A) refund any fees relating to those Goods which the Seller has received from the Customer, less any cancellation or restocking fees; or
 - (B) reduce any invoice the Seller has issued to the Customer for those Goods by the amount recoverable from the Seller's suppliers. The reduced invoice will

be immediately due and payable, and the Seller will deliver the Goods to the Customer's nominated delivery address;

- (ii) where the Seller is not able to cancel the order for any Goods on the Customer's behalf, the Seller will either:
 - (A) not refund any fees received in relation to those Goods from the Customer for those Goods (subject to the Seller's obligations under the CCA); or
 - (B) issue the Customer with an invoice for those Goods which is immediately due and payable, and deliver the Goods to the Customer's nominated delivery address; and
 - (i) for Goods which have already been delivered, the Seller will not refund any fees relating to those Goods which the Seller has received from the Customer for those Goods (subject to the Seller's obligations under the CCA).
 - (j) the Seller retains the right to offset any amount payable to the Customer under clauses 18.5(f) to 18.5(i) or any other clause of this Agreement against any amount the Customer owes to the Seller under this Agreement;
- 18.6 The Customer may not cancel any order for Goods made to the Customer's specifications once production has commenced, or for non-stocklist items once an order has been placed.
- 18.7 A party not in default may pursue any other rights or remedies available at law against a defaulting party, subject to clauses 14 and 15.

19. Compliance with Laws

19.1 The Customer and the Seller will comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods and Services.

19.2 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations 2002. All of the cabling work will comply with the Australian and New Zealand Wiring standards.

19.3 The Seller will conduct installation works to the relevant standards required by the governing authorities.

19.4 The Customer must obtain (at the expense of the Customer) all licenses, approvals, applications and permits that may be required for the provision of the Services, which are not included in the project documents provided by the Seller.

19.5 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

20. Privacy Act 1988

20.1 The Customer agrees for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Seller.

20.2 The Customer agrees that the Seller may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (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/or
 - (d) to assess the creditworthiness of the Customer. The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 20.3 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 20.4 The Customer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other purposes as agreed between the Customer and Seller or required by law from time to time):
- (a) the provision of Goods and Services; and/or
 - (b) the marketing of Goods and Services by the Seller, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods and Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods and Services.

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

- (a) to obtain a consumer credit report about the Customer;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

20.6 The information given to the credit reporting agency may include:

- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
- (c) advice that the Seller is a current credit provider to the Customer;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of the Seller, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
- (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Customer by the Seller has been paid or otherwise discharged.

21. Building and Construction Industry Security of Payment Act 2002

- 21.1 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 2002 may apply.
- 21.2 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 Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

22. General

- 22.1 The failure by the Seller to enforce any provision of this Agreement will not be treated as a waiver of that provision, nor will it affect the Seller's right to subsequently enforce that provision.
- 22.2 If any provision of this Agreement is ruled by a court to be invalid or unenforceable, it will not affect the validity or enforceability of any other provision or part provision of this Agreement.
- 22.3 This Agreement is governed by the laws of the state of Victoria, and are subject to any competent court of the jurisdiction of the courts in that state and courts competent to hear appeals from those courts.
- 22.4 The Customer is not entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller.
- 22.5 The Seller may license or subcontract all or any part of its rights and obligations under this Agreement without the Customer's consent.
- 22.6 The Seller may amend these Terms at any time by written notice to the Customer. Changes made under this clause will apply to any Proposal or Sales Contract (and therefore the Goods and Services under them) dated on or after the date on which the Seller notifies the Customer of the changes. Changes will not apply retroactively to any existing Proposal or Sales Contract on foot unless the Customer agrees in writing that the changes will apply to those existing documents (and therefore the Goods and Services under them).
- 22.7 Subject to clause 22.7 all other variations to this Agreement must be in writing and signed by all parties.
- 22.8 Neither party is liable for any default due to any Force Majeure Event.
- 22.9 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 22.10 This Agreement contains the entire agreement between the parties and supersedes all previous negotiations or agreements in relation to the subject matter of this Agreement.
- 22.11 The parties' rights and obligations under clauses 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18.4, 18.5, 20, 21, and 22 will survive the termination of this Agreement for any reason.

23. Definitions

- 23.1 "Agreement" means the agreement between the parties, comprising the documents as set out in clause 2.7.
- 23.2 "Business Hours" means 7.00 am to 3.30 pm Monday to Friday (excluding any government-gazetted public holiday in the State of Victoria).
- 23.3 "Claim" means any claim notice, demand, investigation, action, proceeding, litigation, or judgment however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence) or statute and whether involving a party to this Agreement or third party.
- 23.4 "Confidential Information" means all spoken, written or electronically stored information belonging to or relating to either party and includes without limitation:
 - (a) any kind of technical, financial or business information;
 - (b) details of employees, suppliers, or customers;
 - (c) material developed under this Agreement; and
 - (d) Intellectual Property, concepts, know-how and trade secrets;

but excludes information in the public domain (other than by default under this Agreement) or information independently known to the other party.

- 23.5 "Consequential Loss" includes, without limitation data loss or unauthorised access to data, loss of opportunity, loss of anticipated profits or savings, expenses incurred through default or breach, wasted overheads, loss of contract, loss of business, loss of production, loss of use, loss of goodwill, and all other pure economic loss, and disappointment, distress, stress, and inconvenience.
- 23.6 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 23.7 "Force Majeure Event" means an unforeseen event beyond the control of the affected party, including an act of god, war, terrorism, riot, vandalism, hacking, industrial action, or law or actions of any government or governmental agency.
- 23.8 "Goods" means any physical goods that the Customer requests, orders, or purchases from the Seller from time to time in accordance with this Agreement.
- 23.9 "Indemnified Officers" means, in relation to a party, its directors, employees, contractors, agents and representatives.
- 23.10 "Intellectual Property" means all intellectual property rights, including copyright, inventions, patents (including patent applications), trade marks (whether registered or not), designs (whether registrable or not), eligible circuit layout rights, domain name licences, know-how, trade secrets, and includes the right to register any intellectual property rights.
- 23.11 "Liability" means any liability (whether actual or prospective), loss, damage, cost or expense of any description, including legal fees on a solicitor and own client basis.
- 23.12 "Out of Scope Fees" means the fees applicable to any Out of Scope Work.
- 23.13 "Out of Scope Work" means all good and services outside the Scope of Work of a Sales Contract.
- 23.14 "Price" means the Price payable for the Goods as agreed between the Seller and the Customer in accordance with clause 7 below.
- 23.15 "Proposal" means a quotation or proposal document the Seller provides to the Customer setting out the goods and services to be provided by the Seller, the fees applicable to those goods and services, and any relevant special conditions.
- 23.16 "Sales Contract" means an accepted Proposal, including any variations in writing to the Proposal.
- 23.17 "Scope of Works" means the scope of Services and the Goods that the Seller has agreed to provide and the Customer has agreed to pay for as set out in a Sales Contract.
- 23.18 "Seller" means NCG AIRCONDITIONING WAREHOUSES PTY LTD, its successors and assigns or any person acting on behalf of and with the authority of NCG AIRCONDITIONING WAREHOUSES PTY LTD.
- 23.19 "Services" means services the Customer requests, orders, or purchases from the Seller from time to time in accordance with this Agreement.
- 23.20 "Specific Exclusions" means the exclusions to the relevant Scope of Works as set out in a Sales Contract.
- 23.21 "Terms" means these standard terms and conditions of trade.