



Cooling and Heating Equipment Pty Limited

ABN 52 601 244 731

Unit 3/30 Octal Street, Yatala, Qld 4207

TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS:

- A. **Company** - means Cooling and Heating Equipment Pty Limited.
- B. **Goods** - means all plant, equipment, fittings and goods ordered by the Purchaser from the Company.
- C. **G.S.T.** - means the goods and services tax.
- D. **Order** - means the formal application, based on the Company's Quotation, for the sale of Goods by the Company to the Purchaser on these Terms and Conditions of Trade.
- E. **Quotation** - means written Quote provided by the Company to the Purchaser inviting the Purchaser to make an Order for the sale of Goods by the Company.
- F. **Purchaser** - means the person, firm or corporation placing an Order with the Company.

2. ESSENTIAL TERMS:

- A. Only these Terms and Conditions shall apply to the sale of Goods to the Purchaser by the Company.
- B. These Terms and Conditions can only be varied by the parties mutually and in writing.
- C. An Order placed by the Purchaser under a Quotation is not binding on the Company until accepted in writing by the Company.

3. ORDERS:

- A. The Company may accept or refuse any Order for Goods at its absolute and sole discretion.
- B. Once an Order for Goods has been accepted by the Company it cannot be cancelled, varied or modified without the Company first approving same in writing.
- C. The Purchaser acknowledges that the Goods will be built, constructed and/or manufactured by a third party (usually outside of Australia) and are based on the specifications of the Purchaser as set out in the Quotation and/or the Order. The Purchaser will be responsible for the adequacy, efficiency, effectiveness and fitness for purpose of the Goods. The Purchaser further acknowledges that the said Goods are likely to be unique and manufactured to the particular needs of the Purchaser and will not likely be on sold to a third party by the Company or the relevant manufacturer should the Order be cancelled by the Purchaser.

- D. Acceptance of the Purchaser's Order does not bind the Company to any Conditions placed on the Order by the Purchaser that are inconsistent with the Quotation or with these Terms and Conditions of Trade.
- E. The Purchaser shall indemnify and keep indemnifying the Company against any cost, damages, out of pocket expenses, charges or loss that the Company may suffer or be liable for in the event of cancellation, modification or variation of an Order placed by the Purchaser and which was accepted by the Company.

4. PRICES:

- A. All prices are quoted Free on Transport (F.O.T.) to the Purchaser's premises as stipulated in the Order or as mutually agreed to in writing by the parties.
- B. All prices are quoted as exclusive of G.S.T. Any G.S.T applicable to the sale should be paid by the Purchaser to the Company upon presentation of a tax invoice.

5. DELIVERY:

- A. Delivery dates are estimates only and the Company is not liable for any loss or damage for failure to deliver by those dates.
- B. The Company will not be in default by reason of any delay in the delivery should such delay be caused by strikes, acts of God, public enemy, riots, incendiaries, interference by civil or military authorities, compliance with Government laws, rules or regulations, delays in transit or any default beyond its control or without its fault or negligence.
- C. The cost of transportation of the goods shall be borne by the Purchaser whether or not same is arranged by the Company.
- D. The Purchaser shall be responsible for the provision of any equipment required for the installation or storage of the Goods including, inter alia, the use of any crane, vehicles or special loading equipment.
- E. Delivery of the Goods and the risks associated therewith shall occur and pass when the Goods first arrive at the Purchaser's premises as aforesaid, notwithstanding the fact that no representatives or agents of the Purchaser are present at the time.
- F. All costs incurred by the Company for delivery of the Goods outside of normal business hours at the request of the Purchaser shall be borne by the Purchaser.
- G. Should there be a need for the Company to store the Goods in its premises or elsewhere at the request of the Purchaser whilst awaiting delivery instructions or for any other reason out of the control of the Company, then the Purchaser shall pay to or reimburse the Company for such costs of storage.

6. STORAGE:

- A. Storage costs for 7 working days only from date of order or letter of intent or from date of availability if made to order.
- B. All storage costs incurred after the 7-day period become responsible for payment by the applicable customer. Payable at \$7.50 per m² per week

7. PAYMENTS:

Account Customers:

- A. Unless indicated to the contrary in the Quotation, a deposit of thirty percent (30%) of the total price must be paid by the Purchaser when placing the Order.
- B. The balance of the Price is to be paid by Purchaser in accordance with the trading terms as set out in the current written credit terms established between the parties.
- C. Should the Purchaser not abide by the said trading terms then apart from any other rights of recovery and otherwise as contained in these terms and conditions of trade the credit facility that had been granted to the Purchaser shall be cancelled by the Company.
- D. If payment is not made within 30 days of end of month of invoice date we have the right to withdraw credit.
- E. Should payment remain outstanding beyond the Company's payment terms as outlined above, interest will be charged at a rate of 2 percent per month calculated daily.
- F. The Purchaser agrees to pay all legal costs, interest on debt and all of Cooling & Heating Fees (including any commission payable on the payment of the debt) incurred by the Company as a result of non-payment of the debt.

Non-Account Customers

- A. Unless indicated to the contrary in the Quotation, a deposit of 50% of the total price must be paid by the Purchaser when placing the order:
- B. The balance of the price is to be paid by clear funds by the Purchaser prior to delivery of the goods.

8. INSPECTION OF GOODS:

- A. The Purchaser must inspect the goods on delivery and shall inform the Company in writing before the close of business on the fifth (5th) working day after delivery should the Purchaser wish to make a claim for damage thereto or for any shortages in the Goods. Failure to so notify the Company will waive any right that the Purchaser may otherwise have had with regard to such claim.

9. WARRANTIES:

- A. The Company excludes all implied conditions and warranties except any implied condition or warranty the exclusion of which would contravene any statute or law or cause any part of this clause to be void.
- B. The Company warrants that the Goods are free of defects in materials or workmanship for a period of twelve (12) months from the date of commissioning thereof or eighteen (18) months from the date of delivery, whichever period first expires, unless the Company issues a specific extended warranty in writing. The Company's obligation under this warranty is limited to repairing or supplying at its discretion without charge

F.O.T.at the Company's spare parts warehouse a replacement part proven to be defective unless otherwise stated in the Quotation. Defective parts shall be returned to the Company with freight and packing pre-paid. Any parts so supplied shall be covered by warranty for the unexpired portion of the warranty period of the original equipment or ninety (90) days whichever is the greater. Labour is specifically excluded unless it is included in the Company's Quotation and the appropriate charge paid by the Purchaser.

10. CONSEQUENTIAL LOSS & LIQUIDATED DAMAGES:

- A.** The Company is not to be liable for any special, exemplary, punitive or consequential loss or damage (including without limitation, loss of profit, loss of opportunity and loss of goodwill) incurred by the Purchaser either directly or indirectly in connection with the supply of Goods.
- B.** Liquidated damages or the quantum thereof are not accepted unless expressly agreed to in writing by the Company.

11. RETENTION TO TITLE:

- A.** The title of ownership of the Goods remains solely with the Company until the Goods are paid for in full. The Purchaser unconditionally authorises the Company to enter into any premises where the Goods may be held for inspection and/or removal. The Purchaser acknowledges and agrees that after installation of the Goods they shall not be deemed to be fixed to any premises or mixed with any other property. The Purchaser hereby indemnifies and shall keep indemnifying the Company against any liability or damage or consequential loss to any third party, property or persons as a result of the removal of the Goods. Should the Purchaser on sell the Goods then, in such event, the proceeds of sale shall be held by the Purchaser in Trust for the Company until the Goods have been fully paid for and only then does the title of ownership in the Goods change to the Purchaser.

12. REGULATORY REQUIREMENTS:

- A.** It is the Purchaser's responsibility to ensure that the Goods are suitable for the environment and the position in which they are to be used and installed and shall meet all applicable regulatory requirements (including, inter alia, any requirements of the local authorities or under the relevant building and fire codes that relate to the installation of the goods).
- B.** The Company shall not be liable in any way as to whether the Goods meet any particular requirements under the aforesaid codes or regulatory requirements and makes no representation as to the fitness for purpose of the Goods and the responsibility for meeting any standard or requirement rests with the Purchaser.

13. GENERAL:

- A.** The Purchaser agrees to the Company obtaining information about the financial standing and credit worthiness of the Purchaser.
- B.** The Purchaser hereby agrees that the Company is entitled to charge any real estate property that it may own (including the property to which the goods may have been installed) to secure the payment of any monies due under these Terms and Conditions and such entitlement will permit the Company to register a caveat on the title of any such property, where it can remain until such time as the goods have been paid for in full.
- C.** These terms and conditions shall be governed by or interpreted according to the law for the time being of Queensland, New South Wales, Victoria, South Australia, Western Australia, the ACT, Tasmania and the Northern Territory.
- D.** Any Government taxes, duties or levies are additional to the Quotation price and are to be paid by the Purchaser.
- E.** The parties agree that should any clause in these Terms and Conditions be considered or found to be invalid then such clause shall be severed from the remaining clauses hereof so as not to affect the validity or enforceability of the said remaining clauses.
- F.** No forbearance or other indulgence granted by one party to the other shall in any way discharge such other party from any of its obligations under these Terms and Conditions or in any way alter or affect any such obligation.