

TERMS AND CONDITIONS OF TRADE

1. Definitions

1.1 "FAC" shall mean Frigair Air Conditioning Pty Ltd trading as Frigcorp HVAC Services its successors and assigns or any person acting on behalf of and with the authority of Frigair Air Conditioning Pty Ltd.

1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by FAC to the Customer.

1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis

1.4 "Goods" shall mean Goods supplied by FAC to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by FAC to the Customer.

1.5 "Services" shall mean all Services supplied by FAC to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

1.6 "Price" shall mean the Price payable for the Goods as agreed between FAC and the Customer in accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts {"FTA"}

2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

3. Acceptance

3.1 Any instructions received by FAC from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by FAC shall constitute acceptance of the terms and conditions contained herein.

3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.

3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of FAC.

3.4 The Customer shall give FAC not less than fourteen (14) days prior written notice or any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, phone number or business practice). The Customer shall be liable for any loss incurred by FAC as a result of the Customer's failure to comply with this clause.

3.5 Goods are supplied by FAC only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price and Payment

4.1 At FAC's sole discretion the Price shall be either:

- (a) as indicated on invoices provided by FAC to the Customer in respect of Goods supplied; or
- (b) FAC's quoted Price (subject to clause 4.2) what shall be binding upon FAC provided that the Customer shall accept FAC's quotation in writing within thirty (30) days.

4.2 FAC reserves the right to change the Price in the event of a variation to FAC's quotation.

4.3 FAC may submit a detailed payment claim at intervals not less than monthly for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations and the value of materials delivered to the site but not yet installed.

4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated, then payment shall be due thirty (30) days following the end of the month in which the invoice is posted to the Customer's address or address for notices.

4.5 Payment will be made by cheque, or by bank cheque, or by credit card (plus a surcharge of up to five percent (5%) of the Price), or by direct credit, or by any other method as agreed 10 between the Customer and FAC.

4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery of Goods

5.1 At FAC's sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by FAC or FAC's nominated carrier).

5.2 At FAC's sole discretion the costs of delivery are included in the Price,

5.3 The Customer shall make all arrangements necessary to take delivery 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 then FAC shall be entitled to charge a reasonable fee for redelivery.

5.4 Delivery of the Goods to a third party nominated by the customer is deemed to be delivery to the Customer for the purposes of this agreement.

5.5 FAC may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.6 The failure of FAC to deliver shall not entitle either party to treat this contract as repudiated.

5.7 FAC shall not be liable for any loss or damage whatsoever due to failure by FAC to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of FAC.

6. Risk

6.1 If FAC retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.

6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, FAC is entitled to receive all insurance proceeds payable of the Goods. The production of these terms and conditions by FAC is sufficient evidence of FAC's rights to receive the insurance proceeds without the need for any person dealing with FAC to make further enquiries.

6.3 Where the Customer expressly requests FAC to leave Goods outside FAC's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.

7. Access

7.1 The Customer shall ensure that FAC has clear and free access to the work site at all times to enable them to undertake the works. FAC shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of FAC.

8. Enclosed Services

8.1 Prior to FAC commencing any work the Customer must advise FAC of the precise location of all enclosed services on the site and clearly mark the same. The enclosed mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connection, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

8.2 Whilst FAC will take all care to avoid damage to any underground services the Customer agrees to indemnify FAC in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.

9. Title

9.1 FAC and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid FAC all amounts owing for the particular Goods; and
- (b) the Customer has met all other obligations due by the Customer to FAC in respect of all contracts between FAC and the Customer.

9.2 Receipt by FAC of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then FAC's ownership or rights in respect of the Goods shall continue.

9.3 It is further agreed that

- (a) where practicable the Goods shall be kept separate and identifiable until FAC shall have received payment and all other obligations of the Customer are met and
- (b) until such time as ownership of the Goods shall pass from FAC to the Customer FAC may give notice in writing to the Customer to return the Goods or any of them to FAC. Upon such notice the rights of the Customer to obtain Ownership or any other interest in the Goods shall cease: and
- (c) FAC shall have the right of stopping the Goods in transit whether or not delivery has been made: and
- (d) If the Customer fails to return the Goods to FAC then FAC or FAC's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
- (e) the Customer is only a bailee of the Goods and until such time as FAC has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to FAC for the Goods, on trust for FAC: and
- (f) the Customer shall not deal with the money of FAC in any way which may be adverse to FAC: and
- (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of FAC: and
- (h) FAC can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer: and
- (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted it to other products, the parties agree that FAC will be the owner of the end products.

10. Defects

10.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify FAC of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford FAC an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which FAC has agreed in writing that the Customer is entitled to reject, FAC's liability is limited to either (at FAC's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.

10.2 Goods will not be accepted for return other than in accordance with 10.1 above.

11. Warranty

11.1 Subject to the conditions of warranty set out in clause 11.2 FAC warrants that if any defect in any workmanship of FAC becomes apparent and is reported to FAC within twelve (12) months of the date of

delivery (time being of the essence) then FAC will either (at FAC's sole discretion) replace or remedy the workmanship.

11.2 The conditions applicable to the warranty given by Clause 11.1 are:

- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - I. failure on the part of the Customer to properly maintain any Goods: or
 - II. failure on the part of the Customer to follow any instructions or guidelines provided by FAC: or
 - III. any use of any Goods otherwise than for any application specified on a quote or order form; or
 - IV. the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user: or
 - V. fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and FAC shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without FAC's consent.
- (c) in respect of all claims FAC shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

11.3 For Goods not manufactured by FAC, the warranty shall be the current warranty provided by the manufacturer of the Goods. FAC shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

12. Intellectual Property

12.1 Where FAC has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in FAC and shall only be used by the Customer at FAC's discretion.

12.2 The Customer warrants that all designs or instructions to FAC will not cause FAC to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify FAC against any action taken by a third party against FAC in respect of any such infringement.

12.3 The Customer hereby authorises FAC to utilise images of the Goods designed or drawn by FAC in advertising, marketing, or competition material by FAC.

13. Default and Consequences of Default

13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at FAC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

13.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by FAC.

13.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify FAC from and against all costs and disbursements incurred by FAC in pursuing the debt including legal costs on a solicitor and own client basis and FAC's collection agency costs.

13.4 With out prejudice to any other remedies FAC may have, if at any time the Customer is in breach of any obligations (including those relating to payment) FAC may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. FAC will not be liable to the Customer for any loss or damage the Customer suffers because FAC has exercised its rights under this clause.

13.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

13.6 Without prejudice to FAC's other remedies at law FAC shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to FAC shall, whether or not due for payment, become immediately payable in the event that

- (a) any money payable to FAC becomes overdue, or in FAC's opinion the Customer will be unable to meet its payments as they fall due: or
- (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; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

14. Security and Charge

14.1 Despite anything to the contrary contained herein or any other rights which FAC may have howsoever:

- (a) where the Customer and/or the Guarantor (if any) is the owner of land, really or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, really or any other asset to FAC or FAC's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that FAC (or FAC's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shaft be withdrawn once au payments and other monetary obligations payable hereunder have been met
- (b) should FAC elect to proceed in any manner in accordance with this clause and/or it's sub-clauses, the Customer and/or Guarantor shall indemnify FAC from and against an FAC's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint FAC or FAC's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

15. Dispute Resolution

15.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

16. Compliance with Laws

16.1 The Customer and FAC shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the work.

16.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.

16.3 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.

17. Cancellation

17.1 FAC may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice FAC shall repay to the Customer any sums paid in respect of the Price. FAC shall not be liable for any loss or damage whatsoever arising from such cancellation.

17.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by FAC (including, but not limited to, any loss of profits) up to the time of cancellation.

18. Privacy Act 1988

18.1 The Customer and/or the Guarantor/s agree for FAC to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by FAC.

18.2 The Customer and/or the Guarantor/s agree that FAC may exchange information about the Customer and the Guarantor/s 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 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 credit worthiness of Customer and/or Guarantor/s.

18.3 The Customer consents to FAC being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

18.4 The Customer agrees that personal credit information provided may be used and retained by FAC for the following purposes and for other purposes as shall be agreed between the Customer and FAC or required by law from time to time:

- (a) provisions of Goods: and/or

- (b) marketing of Goods by FAC, its agents or distributors in relation to the Goods; and/or
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by 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

18.5 FAC 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; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

19. Building and Construction Industry Security of Payments Act 1999

19.1 At FAC'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 Payments Act 1999 may apply.

19.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

20. General

20.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.

20.3 FAC shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by FAC of these terms and conditions.

20.4 In the event of any breach of this contract by FAC the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.

20.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by FAC nor to withhold payment of any invoice because part of that invoice is in dispute.

20.6 FAC may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

20.7 The Customer agrees that FAC may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which FAC notifies the Customer of such change

20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

20.9 The failure by FAC to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect FAC's right to subsequently enforce that provision.