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## Air-rite Mechanical Services Pty Ltd – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “Contractor” means Air-Rite Mechanical Services Pty Ltd or any person acting on behalf of and with the authority of Air-Rite Mechanical Services Pty Ltd.
- 1.2 “Client” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Works” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Contractor to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any GST where applicable) for the Works as agreed between the Contractor and the Client in accordance with clause 4 below.
- 1.5 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999” Cth.

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Contractor.
- 2.3 Any advice, recommendation, information, assistance or service provided by the Contractor in relation to Materials or Works supplied is given in good faith, is based on the Contractor’s own knowledge and experience and shall be accepted without liability on the part of the Contractor and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Materials and Works.
- 2.4 If the Contractor has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 2.5 The Client acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, the Contractor reserves the right to vary the Price with alternative Materials in accordance with clause 4.2, subject to prior confirmation and agreement of both parties. The Contractor also reserves the right to halt all Works until such time as the Contractor and the Client agree to such changes. The Contractor shall not be liable to the Client for any loss or damage the Client suffers due to the Contractor exercising its rights under this clause.
- 2.6 The Contractor has the right to postpone or refuse to provide Works where:
  - (a) unsafe or unsanitary conditions exist; or
  - (b) the Contractor deems the equipment under agreement is no longer economically repairable. The Contractor will provide the Client with a proposal to replace such equipment; or
  - (c) the access to the equipment is not accessible including but not limited to, having adequate crawl space, attic and roof space to provide dry access to service equipment and assets.

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2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the *Electronic Transactions (Queensland) Act 2001* any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Change in Control

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

### 4. Price and Payment

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

- (a) as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials supplied; or
- (b) the Contractor's quoted Price (subject to clause 4.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.

4.2 The Contractor reserves the right to change the Price:

- (a) if a variation to the Materials which are to be supplied is requested; or
- (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
- (c) if during the course of the Works, the Materials cease to be or are not available from the Contractor's third-party suppliers, then the Contractor reserves the right to provide alternative Materials; or
- (d) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed or change of design; or
- (e) where the value of any Small Technology Certificates (STCs) upon which the sale Price is dependent on any increases or decreases, as STC's are traded on the open market and the price varies from time to time; or
- (f) where there is any change to any monies available to the Client from the Australian Federal Government's Renewable Energy Target Program (RET Program) or any other Commonwealth, State or Local Government rebates or incentives; or
- (g) in the event of increases to the Contractor in the cost of labour or materials which are beyond the Contractor's control.

4.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

4.4 At the Contractor's sole discretion, a non-refundable deposit may be required.

4.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:

- (a) on completion of the Works; or
- (b) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.

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- 4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Contractor.
- 4.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.

### **5. Provision of the Works**

- 5.1 Subject to clause 5.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 5.2 The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
  - (b) have the site ready for the Works; or
  - (c) notify the Contractor that the site is ready.
- 5.3 The Contractor may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.4 Any time specified by the Contractor for delivery of the Works is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

### **6. Access**

- 6.1 The Client shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the Works. The Contractor 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 the Contractor.

### **7. General Risk**

- 7.1 If the Contractor retains ownership of the Materials under clause 12 then:
- (a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
    - (i) the Client or the Client's nominated carrier takes possession of the Materials at the Contractor's address; or
    - (ii) the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
  - (b) where the Contractor is to both supply and install Materials then the Contractor shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.

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- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 7.3 The Client acknowledges and agrees that where the Contractor has performed temporary repairs on the unit that:
- (a) the Contractor offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
  - (b) the Contractor will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair of the damaged unit.
- 7.4 The Client acknowledges that the Contractor takes no responsibility for any Works requested to be completed by it that are not fit for purpose based on the design of the Client or design-builder of a project and specifically, expressly disclaims all express or implied warranties and guarantees with respect to the performance of design and professional services. It is further agreed that the quality of the Contractor's Works shall be judged solely on whether the Contractor performed the Works consistent with the professional skill and care ordinarily provided by industry professionals under the same or similar circumstances. The Client agrees to indemnify the Contractor against any loss or damage caused due to any complaint, action or claim commenced due to the design.

### **8. Air Conditioning Risk/Installation**

- 8.1 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation in accordance with clause 4.2 if the Client requests the unit to not be located adjacent to the external wall, due to the underground piping required.
- 8.2 The final location of the wall, window or floor unit must be determined on site by the Client.
- 8.3 The Contractor shall upon installation ensure that all installed Materials meet current industry standards applicable to noise levels, however the Contractor cannot guarantee that noise levels will remain constant post installation as the Materials may be impacted by many factors such as the weather, lack of maintenance, tampering etc.
- 8.4 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.
- 8.5 The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 8.6 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify the Contractor immediately upon any proposed changes. The Client agrees to indemnify the Contractor against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 4.2.

### **9. Electrical**

- 9.1 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. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 9.2 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing), the Contractor reasonably forms the opinion that the Client's premises is not safe for the installation of Materials to proceed then the Contractor shall be entitled to delay installation of the Materials (in accordance with clause 5.2 above) until the Contractor is satisfied that it is safe for the installation to proceed.

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9.3 Where the Client has supplied goods for the Contractor to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in the goods. The Contractor shall not be responsible for any defects in the Works, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of goods supplied by the Client.

9.4 The Client acknowledges that the Contractor is only responsible for parts that are replaced by the Contractor, and in the event that other parts/Materials, subsequently fail, the Client agrees to indemnify the Contractor against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.

### **10. Underground Locations & Hidden Services**

10.1 Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all underground/hidden mains/services on the site and clearly mark the same (including but not limited to any mains/services in wall cavities). The mains/services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

10.2 Whilst the Contractor will take all care to avoid damage to any services the Client agrees to indemnify the Contractor 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 in accordance with clause 10.1.

### **11. Compliance with Laws**

11.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

### **12. Title**

12.1 The Contractor and the Client agree that legal and beneficial title in the Materials shall remain with the Contractor until:

- (a) it has received payment in full for all monies owed by the Client; and
- (b) the Client has met all of its other obligations to the Contractor.

12.2 Receipt by the Contractor 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.

12.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 12.1:

- (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request.
- (b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
- (c) the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries.
- (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.
- (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the

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- Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
- (f) unless the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials.
  - (g) the Contractor may keep or resell any Materials repossessed under sub-clause 12.3(f).
  - (h) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred.
  - (i) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor.
  - (j) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
- 12.4 Where pursuant to sub-clause 12.3(f):
- (a) the Contractor resells the Materials repossessed, it is agreed that the Contractor may credit the Client's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs); or
  - (b) the Contractor retains possession of the repossessed Materials, it is agreed that the Contractor may credit the Client's account with the invoice value less such sums as the Contractor reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 12.5 The Contractor shall not be liable for any costs, damages, expenses or losses incurred by the Client or a third party as a result of any action taken to repossess the Materials.
- 12.6 Until the Contractor receives payment for the Materials in full, the Client acknowledges that the Contractor has a Purchase Money Security Interest ("PMSI") which attaches over the Materials and their proceeds and a Security Interest in relation to the other amounts owed by the Client to the Contractor.
- 13. Personal Property Securities Act 2009 ("PPSA")**
- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA.
- 13.3 The Client undertakes to:
- (a) do anything (such as obtaining consents, producing documents, producing receipts and getting documents completed and signed) which the Contractor asks and considers reasonably necessary for the purposes of:
    - (i) ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective;
    - (ii) enabling the Contractor to apply for any registration, or give any notification, in connection with the Security Interest created under this Contract so that the PMSI and/or Security Interest has the priority required by the Contractor;
  - (b) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of the Contractor;
  - (d) immediately advise the Contractor of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 13.4 The Contractor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 To the extent permitted by law, the Client irrevocably waives its rights to:
- (a) receive notices or statements under sections 95, 118, 121(4), 125, 130, 132(3)(d) and 132(4) and 135 of the PPSA;

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- (b) redeem the Materials under section 142 of the PPSA;
- (c) reinstate the Agreement under section 143 of the PPSA; and
- (d) receive a Verification Statement in accordance with section 157 of the PPSA

### 14. Security and Charge

- 14.1 In consideration of the Contractor agreeing to supply the Materials, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 14.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

### 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 15.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Materials or to review the Works provided.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 15.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If the Contractor is required to replace any Materials under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Materials.
- 15.7 If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
- 15.8 If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Materials is:
  - (a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;
  - (b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials;
  - (c) otherwise negated absolutely.
- 15.9 Subject to this clause 15, returns will only be accepted provided that:
  - (a) the Client has complied with the provisions of clause 15.1; and
  - (b) the Contractor has agreed that the Materials are defective; and

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- (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 15.10 Notwithstanding clauses 15.1 to 15.9 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Materials;
  - (b) the Client using the Materials for any purpose other than that for which they were designed;
  - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) interference with the Works by the Client or any third party without the Contractor's prior approval;
  - (e) the Client failing to follow any instructions or guidelines provided by the Contractor;
  - (f) fair wear and tear, any accident, or act of God.
- 15.11 In the case of second-hand Materials, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second-hand Materials prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Contractor as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that the Contractor has agreed to provide the Client with the second-hand Materials and calculated the Price of the second-hand Materials in reliance of this clause 15.11.
- 15.12 The Contractor may in its absolute discretion accept non-defective Materials for return in which case the Contractor may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Materials plus any freight costs.
- 15.13 Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return, then the Contractor will only accept a return on the conditions imposed by that law.

### **16. Intellectual Property**

- 16.1 Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.
- 16.2 The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 16.3 The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Contractor has created for the Client.

### **17. Default and Consequences of Default**

- 17.1 Interest accrues on any amount owing after the due date at the rate of 15% per annum, calculated daily from the first day overdue until payment.
- 17.2 The Client shall pay (on a full indemnity basis) all expenses, disbursements, collection costs and legal costs which the Contractor has incurred or is liable to pay, in connection with the enforcement of any rights and/or preservation of any rights contained in this contract.
- 17.3 For the purposes of clause 17.2, the Client acknowledges that collection costs may be calculated on a commission basis at a percentage rate of the amount due (as agreed by the Contractor and the collection agent) and the Client expressly agrees to pay for those expenses as liquidated damages on demand, irrespective of whether (a) the Contractor is not liable to pay the collection



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agent the commission, until the Client has made payment of the Client's overdue debt (or any portion thereof) and/or (b) the amount of work actually performed by the collection agent before the Client makes a payment for an overdue debt.

- 17.4 Further to any other rights or remedies the Contractor may have under this contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 17.5 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by the Contractor;
  - (c) the Client becomes insolvent or bankrupt, 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### **18. Cancellation**

- 18.1 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Works to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
- 18.2 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### **19. Privacy Act 1988 (Cth) (As Amended)**

- 19.1 The Contractor collects personal information about the Client for the purposes set out in its Privacy Policy. This policy may be located at: <https://www.airritemech.com.au/>. A hardcopy of this policy can also be provided to the Client free of charge, upon request.
- 19.2 The Client agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g., name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Contractor.
- 19.3 The Client agrees that the Contractor may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or

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- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 19.4 The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.
- 19.5 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Works.
- 19.6 The Contractor may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 19.7 The information given to the CRB may include:
- (a) personal information as outlined in 19.1 above;
  - (b) name of the credit provider and that the Contractor is a current credit provider to the Client;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Client's application for credit or commercial credit (e.g., date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Contractor has been paid or otherwise discharged and all details surrounding that discharge (e.g., dates of payments);
  - (g) information that, in the opinion of the Contractor, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.8 The Client shall have the right to request (by e-mail) from the Contractor:
- (a) a copy of the information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect information; and
  - (b) that the Contractor does not disclose any personal information about the Client for the purpose of direct marketing.
- 19.9 The Contractor will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 19.10 The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 20. Unpaid Seller's Rights**
- 20.1 Where the Client has left any item with the Contractor for repair, modification, exchange or for the Contractor to perform any other service in relation to the item and the Contractor has not received or been tendered the whole of any monies owing to it by the Client, the Contractor shall have, until all monies owing to the Contractor are paid:
- (a) a lien on the item; and

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- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 20.2 The lien of the Contractor shall continue despite the commencement of proceedings, or judgment for any monies owing to the Contractor having been obtained against the Client.
- 21. *Building Industry Fairness (Security of Payment) Act 2017 (Qld)***
- 21.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Works and/or Materials then the provisions of the *Building Industry Fairness (Security of Payment) Act 2017 (Qld)* may apply.
- 21.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the *Building Industry Fairness (Security of Payment) Act 2017 (Qld)*, except to the extent permitted by the Act where applicable.
- 22. General**
- 22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.
23. These terms and conditions and all matters concerning the business relationship between the Contractor and the Client shall be governed by the law of the State of Queensland and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland for the conduct of any litigation.
- 23.1 Subject to clause 15 the Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 23.2 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 23.3 The Client cannot licence or assign without the written approval of the Contractor.
- 23.4 The Contractor may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 23.5 The Client agrees that the Contractor may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Works to the Client.
- 23.6 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.
- 23.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.