

**Paramount**



**Airconditioning (Aust) Pty. Ltd.**

39-41 Geddes Street, Mulgrave Victoria 3170  
ABN 79 169 847 929

## **Trading Terms and Conditions**

### **1. Definitions**

a) In these Trading Terms:

**"Australian Consumer Law" and "ACL"** means Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*;

**"CCA"** means the *Competition and Consumer Act 2010 (Cth)*;

**"Company"** means Paramount Airconditioning (Aust) Pty Ltd (ACN 169 847 929)

**"Consumer"** means any person defined as a "Consumer" under the ACL

**"Consumer Goods"** means 'goods of a kind ordinarily acquired for personal, household or domestic use or consumption', as that expression is used in section 3 of the ACL.

**"Consumer Guarantee"** means a consumer guarantee applicable to this contract under the ACL, including any Express Warranty.

**"Consumer Services"** means 'services of a kind ordinarily acquired for personal, household or domestic use or consumption', as that expression is used in section 3 of the ACL.

**"Customer"** means the person described in a credit account application as the person in whose name an account is maintained by the Company and/or the person or entity that purchases Goods and services from the Company or from or on behalf of whom the Order is received.

**"Delivery Date"** means the date upon which the Goods are dispatched by the Company or its agent to the Delivery Point;

**"Delivery Point"** means the address nominated by the Customer as the place for delivery and noted on the order or as otherwise advised;

**"Express Warranty"** has the same meaning as in section 2(1) of the ACL.

**"Fair or Reasonable"** means 'fair or reasonable' for the purposes of section 64A of the ACL.

**"Force Majeure Event"** is defined in clause 22.

**"Financing Statement"** and "Financing change statement" means a "financing statement" and a "financing change statement" within the meaning of section 10 of the PPSA.

**"Goods"** means any good and services supplied by the Company to the Customer under these Trading Terms including but not limited to supplies, plant, equipment, machinery, materials and stores;

**"GST"** means "GST" within the meaning of the GST Act.

**"GST Act"** means the A New Tax System (Goods and Services Tax) Act 1999 (as amended) and the following expressions bear the same meaning as in the GST Act: "tax invoice", "taxable supply" and "value".

**"Insolvency Event"** means, in relation to a party, that one of the events specified in clause 21 has occurred in relation to that party.

**"Intellectual Property"** means any intellectual property including without limitation patents, trademarks, copyright, designs, layouts, circuit boards, knowhow, software, object codes, source codes, and confidential information.

**"Order"** means any agreement between the Company and the Customer relating to the sale of Goods to the Customer and which shall incorporate the terms of any credit application or quotation, these Trading Terms and the terms of any other document between the Company and the Customer.

**"PMSI"** means a purchase money security interest as defined in section 14 of the PPSA.

**"PPSA"** means the Personal Property Securities Act 2009 (Cth).

**"Proceeds"** means "proceeds" within the meaning of section 31 of the PPSA.

**"Register"** means the Personal Property Securities Register established under the PPSA.

**"Security Agreement"** means a "security agreement" within the meaning of section 10 of the PPSA.

**"Security Interest"** means a "security interest" within the meaning of section 12 of the PPSA.

**"Trading Terms"** means these Trading Terms and Conditions (and any amendments that may be made to them from time to time).

- b) Terms and expression defined in or for the purposes of the CCA, ACL or the PPSA have the same meaning when used in these Trading Terms.
- c) Words importing the singular shall include the plural (and vice versa).
- d) A reference to any party includes its or their successors in title or personal representatives as the case may be.

- e) If any party is a trustee of a trust then any agreement, warranty, representation or obligation binds such party both in its capacity as trustee and in its own right and
- f) a reference to any statute includes any consolidated or replacement statute and any regulations or by laws issued under the statute.

## **2. General**

- a) These Trading Terms apply to:
  - i) The establishment, operation and use of the account of the Customer with the Company;
  - ii) All transactions effected by the Customer with the Company for the supply of goods or services on its account or on a cash basis unless otherwise expressly agreed in relation to any particular supply of goods; and
  - iii) The exclusion of all others including any terms and conditions of the Customer and supersede all previous negotiations and communications.
- b) These Trading Terms shall apply as if incorporated into each order placed by the Customer with the Company.
- c) These Trading Terms may be varied only with the written agreement of the Company.
- d) The Company may at any time and from time to time by written notice to the Customer, alter these Trading Terms.

## **3. Quotations**

- a) Quoted prices will remain valid for a period of 30 days from the quotation date and are subject to alteration without notice to the Customer after that period.
- b) Where in the period between acceptance of a quote and delivery of the relevant Goods the Company incurs an increase in the cost of supplying and/or delivering the Goods for any reason including, but not limited to, the costs of materials or labour are increased by reason of the provisions of any Acts, By-law, Order or Regulation of any Parliament, Municipality, or any authority having jurisdiction over the works not in force at the date of the quotation, the Company reserves the right to increase the quoted price of those Goods at any time prior to delivery (a "price escalation"). The Customer shall accept any such price escalation.
- c) The Company reserves the right to decline, to fulfill any order in whole or in part, at any time prior to the delivery of the Goods or performance of the services, in which case the Company will be under no obligation in respect of the Order and the Customer shall not have any claim against the Company for any damage, loss, cost or expense whatsoever.
- d) The Customer shall be deemed to have accepted all of these Trading Terms if the Company's quotation is accepted and shall be bound by such Trading Terms. No conditions can be excluded unless agreed to in writing by a director of the Company.
- e) Where the Company provides a tender to the Customer, its tender price excludes costs associated with or arising out of the Clean Energy Act 2011 and associated legislation (collectively known as the Clean Energy Future Legislative Package). The Company reserves all of its rights to claim additional costs arising out of the Clean Energy Future Legislative Package, whether incurred directly or indirectly.

## **4. Orders**

- a) The Customer may place and the Company may accept or reject orders in part or full for the supply of Goods upon these Trading Terms by:
  - i) A communication in writing (including by e-mail); or
  - ii) Any other means that the parties agree including by telephone and by internet ordering.
- b) On acceptance of any order by the Company the contract thereby created shall be deemed (subject to these Trading Terms) to be irrevocable and any deposits are not returnable. Accordingly, orders accepted by the Company cannot be cancelled or altered in whole or in part without the Company's written consent and on terms that will indemnify the Company against all loss.

## **5. Pricing**

- a) All prices shall be in Australian Dollars as determined by the Company plus GST.
- b) All prices quoted or agreed are on a tax exclusive basis. The applicable amount of GST or other taxes will be disclosed on invoices.
- c) The Customer is liable for the amount of any GST payable in respect of the taxable supply.
- d) Any reduction to the original quantity quoted on, may result in an increase to the quoted unit price.
- e) Unless otherwise agreed in advance, the Company reserves the right to:
  - i) Charge the Customer for the cost of freight, all Customs Duty and other charges.
  - ii) Charge for re-scheduling and delivery for all variations to the original contract.
  - iii) Adjust prices if and when necessary prior to acceptance of any offer from the Customer.

## **6 Delivery,**

- a) All Goods shall be delivered by the Company or its agent to the Delivery Point. Any receipt or signed delivery docket for the Goods obtained from any person at the Delivery Point shall be conclusive of delivery of the Goods in accordance with the Order. The Customer shall ensure that the Delivery Point is accessible and any determination by the Company or its agent in respect of accessibility or safety at the Delivery Point shall be binding on the Customer. The Customer shall be responsible for any additional unloading costs incurred by the Company as a result of restricted site access.
- b) Any time quoted for delivery is an estimate only of the actual date of delivery. The Company shall not be bound to deliver on the estimated delivery date nor shall the Company be liable for any delay in delivery unless specifically agreed to in writing by a director of the Company. The Customer shall remain liable to accept and pay for Goods regardless of any delay in delivery.
- c) Further to the matters referred to in clause 6 (b) and for the avoidance of doubt, the Company shall not be liable for loss or damage arising from delays in delivery resulting from a Force Majeure Event as defined in clause 22 hereof. None of these events shall entitle the Customer to cancel the contract, and the delivery date shall be extended accordingly.

## **7. Instalments**

- a) The Company reserves the right to deliver the Goods by installments.
- b) Failure of the Company to deliver any installment shall not entitle the Customer to cancel the balance of the order.
- c) In the event of the Customer making default in respect to payment of any installment, the Company may elect to treat the default as a breach of contract relating to each other installment.

## **8. Storage**

- a) If the Goods are stored by the Company, the Customer shall indemnify the Company for all costs and expenses arising from such storage and any re-delivery costs.
- b) The Customer shall inspect the stored Goods and notify the Company in writing of any defect with the Goods within TWO (2) days from the commencement of storage and any claim not so notified within that time shall be deemed to be absolutely waived.

## **9. Pallets**

Any pallet used for the delivery of the Goods remains the property of the Company or the manufacturer of the Goods and is not included in any sale.

## **10. Examination of Goods**

If the Customer wishes to inspect or examine the Goods prior to delivery then it shall do so at its own cost. The Company accepts no responsibility for any defects identified as a result of the Customer's examination once the Goods have left the Company's control.

## **11. Claims and Returns**

A Customer will be responsible for immediate examination of the Goods upon arrival at their destination and will be taken to have accepted any Goods received by it as being in accordance with its order unless it notifies the Company in writing of its claim, within 2 days after delivery of the Goods to the Delivery Point except as may otherwise be provided by law. The Goods in question should be set aside for inspection by a nominated representative of the Company.

## **12. Cancellations and Variations**

- a) The Customer may not cancel or vary an order unless the Company in its absolute discretion consents in writing to the cancellation or variation.
- b) The Company may charge the Customer for any reasonable costs incurred in preparation of any order that has been varied or cancelled.
- c) The Company reserves the right to immediately cancel any contract for the supply and Installation of goods & services or suspend any such supply without incurring any liability to the Customer in any of the following circumstances:
  - (i) The Customer is overdue with any payment due under these Trading Terms or is otherwise in breach of these Trading Terms or
  - (ii) An Insolvency Event has occurred.
- d) Cancellation by the Company under this clause shall be without prejudice to the Company's right to recover payment from the Customer for Goods previously supplied.

### **13. Withholding Supply**

The Company reserves the right, irrespective of whether or not an order has been accepted and without notice to the Customer, to withhold supply to the Customer and/or to cancel any obligation it may have to the Customer and the Company will not be liable for loss of damage resulting directly or indirectly from such action where:

- a) The Goods ordered are no longer available for any reason;
- b) The Customer has failed to observe these Trading Terms or the Company's payment terms or
- c) The Company has determined, in its absolute discretion, that credit should no longer be extended to the Customer.

### **14. Payment**

- a) The Customer shall pay to the Company the contract price set out in the tax invoice. All charges are strictly nett and are payable on the date specified in the tax invoice.
- b) On all credit accounts the Company shall invoice the Customer for payment for each delivery made or for Goods not ready for delivery but stored by the Company on the customers behalf.
- c) Payment to the Company is not subject to the Customer receiving the Goods supplied.
- d) No cash retentions are to be deducted from any payment made to the Company unless mutually agreed.
- e) Where the Company has agreed to supply the Goods to the Customer on credit, payment is required to be made by the Customer by the 30<sup>th</sup> day from the end of the month in which the Goods are delivered.
- f) All payments shall be made free of any deductions, withholding or set-off unless otherwise agreed in writing with the Company
- g) The Company reserves the right to charge interest on any amount overdue calculated on a daily basis from the date that the unpaid amount became due until the date that it is paid in full. Any interest payable under this clause shall be calculated at the rate of the business overdraft reference rate charged by the Company's Bank on outstanding amounts from time to time. The Customer acknowledges that this interest rate is a charge consequent upon the Customer's default and not a charge referable to the provision of credit. Liquidated damages provisions do not apply unless agreed upon in writing by both the Company and the Customer prior to the placement of an order.
- h) All payment claims are issued under the Building and Construction Industry Securities of Payment Act 2002.
- i) The Company reserves the right on all credit accounts to vary the terms of payment at any time should the credit worthiness of the Customer at any time become, in the Company's opinion, unsatisfactory.
- j) If the Customer fails to pay for any goods or services supplied by the Company when due, then by notice to the Customer the Company may declare any amounts actually or contingently owing by the Customer to the Company to be immediately due and payable.
- k) Where the Customer is overdue with any payment or the Company is in receipt of credit references that it regards as unsatisfactory, the Company reserves the right to change the Customer to Cash on Delivery (**COD**) account and all Goods & Services on a COD account shall be paid for before they are supplied.
- l) The Company shall not be responsible and/or liable on removal of Goods and/or materials and/or services from the Customer's premises due to non -payment of moneys outstanding.
- m) Credit facilities may be suspended or withdrawn at the discretion of the Company at any time.

### **15. Credit Card Payments**

- a) If the Customer pays its outstanding account by a credit card, at the time the transaction is processed the Company reserves the right to charge the Customer an amount that the Company determines (acting reasonably) to be equal to the merchant service fee or any similar fee payable by the Company to its transaction acquirer in connection with the transaction.
- b) The Company may add any amount payable by the Customer under clause 15(a) to the sale price of the relevant Goods or services supplied or to be supplied by the Company to the Customer.

### **16. GST**

- a) To the extent that a party makes a taxable supply in connection with these Trading Terms, the consideration payable by a party under these Trading Terms represents the value of the taxable supply for which payment is to be made, unless otherwise expressly agreed.
- b) Subject to clause 16(c), if a party makes a taxable supply pursuant to these Trading Terms for a consideration which, under clause 16(a), represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- c) A party's obligation to make payment under clause 16(b) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

### **17. Default Arrangements & Enforcement Expenses:**

If the Customer fails to pay any amounts when due, then in addition to any other amount payable under these Trading Terms, the Customer must pay to the Company upon demand (in the Company's discretion) any costs incurred in connection with enforcement of any of the Company's rights in connection with the supply of Goods on these Trading Terms including without limitation:

- a) Any legal costs (on a solicitor and own client basis) incurred by the Company;
- b) Any mercantile agents fees incurred by the Company in recovering or attempting to recover any amount payable by the Customer under these Trading Terms; and
- c) Any dishonour or bank fees incurred by the Company in connection with payments or remittances that are made or which should have been made by the Customer.

### **18. Exclusions of Warranties and Limitations of Liability:**

- a) The Company acknowledges that the Australian Consumer Law and similar legislation provides:
  - i) Certain rights for Consumers that cannot be excluded; and
  - ii) In relation to the supply of Goods, that in some circumstances the Customer may be a Consumer.
- b) Subject to clause (c) hereof, the Company excludes any and all conditions, warranties, terms and consumer guarantees implied by statute, general law or custom (including without limitation the Australian Consumer Law) applicable to any supply of Goods.
- c) The Consumer Guarantees apply to any supply of Goods where the Customer is a Consumer, and the liability of the Company in connection with the Consumer Guarantees is not limited except as stated in clause (d).
- d) If the Customer is a Consumer in relation to the supply of Goods, and those goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the liability of the Company in connection with the Consumer Guarantees is limited to one of the following (as selected by the Company):
  - i) The replacement of the Goods or the supply of equivalent Goods and
  - ii) The payment of the cost of replacing the Goods or of acquiring Goods equivalent to the Goods.
- e) The Company:
  - i) Excludes any liability in contract, tort (including negligence) or otherwise, in connection with any supply of Goods, for any indirect damages or losses, or for any special, punitive or exemplary damages;
  - ii) Limits its liability in contract, tort (including negligence) or otherwise, in connection with any supply of Goods, to the price payable by the Customer for the Goods; and
  - iii) Excludes any liability for or in connection a claim that the Goods are not fit for a particular purpose or function, except where the Company has a liability as contemplated by clauses (a) or (d) of this paragraph .
  - iv). The Company takes no responsibility for the workmanship or the quality of work performed by sub contractors engaged by the Customer whether recommended by the Company or not.
  - v) The Customer agrees to notify the Company in writing of any change in ownership or shareholding of the Customer within seven (7) days from the date such change or immediately if an Insolvency Event as specified in paragraph 22 hereof occurs and the Customer shall indemnify the Company against any loss or damage incurred by it as a result of its failure to notify the Company of such change or Insolvency Event.

### **19. Retention of Title Arrangements**

- a) Property in and title to any Goods delivered to the Customer or to any site pursuant to any contract or subcontract pending payment in full by the Customer remains with the Company until the Customer has paid in full (and in cleared funds) all amounts owing by the Customer to the Company in connection with the Goods.
- b) Until such time as title to the Goods passes to the Customer, the Customer will hold them on trust and as bailee for the Company.
- c) The right of the Customer to incorporate and/or affix the Goods in a property shall automatically cease if the Customer becomes insolvent or subject to external administration

### **20. Personal Property Securities Act arrangements**

#### **a) Acknowledgement of security agreement and security interest**

The Customer acknowledges and agrees that:

- i) The Trading Terms are a security agreement for the purposes of the PPSA;
- ii) The Company has a security interest in the Goods and in any present or after acquired property that represents Proceeds of the Goods and/or in which the Goods have been attached or incorporated, including co-mingled goods; and
- iii) The security interest secures the due and punctual payment of all moneys payable by the Customer to the Company under these Trading Terms.

## **b) Acknowledgment of arrangements for financing statements**

The Customer acknowledges and agrees as follows:

### *i) Financing statements and financing change statements*

The Company may at any time register a financing statement (or, if relevant, a financing change statement) on the Register in relation to its security interest in the Goods that may include terms that:

- describe the Company as the "secured party" and the Customer as the "grantor";
- describe the Goods supplied by the Company to the Customer from time to time pursuant to these Trading Terms as collateral in the class of "other goods" (or in such other class as the Company may reasonably determine is applicable to the Goods);
- specifies that the security interest that the Company holds in the collateral is a PMSI in accordance with item 7 of the table in section 153(1) of the PPSA to the extent that it secures payment of the amounts owing in connection with that collateral; and
- specifies that the security interest affects Proceeds and, in particular, all present and after acquired property that represents Proceeds of the Goods.

### *ii) Period of registration*

The Company may register a financing statement or financing change statement on the PPSA Register for any period that the Company determines (in its discretion).

### *iii) Payment of fees and costs*

Upon request made by the Company, the Customer must pay to the Company all fees, charges and expenses that the Company may reasonably incur in:

- preparing, lodging or registering any financing statement or financing change statement in relation to any security interest that is granted to the Company under the Trading Terms;
- maintaining any such registration; or
- enforcing any security interest granted to the Company under the Trading Terms.

These fees, charges and expenses may be incurred by or with an agent that acts on behalf of the Company.

### *iv) When registration to be effected*

The Company may register its security interest on the Register at any time so long as the Company believes on reasonable grounds that it will become a secured party in relation to the Goods including without limitation when the Customer signs or otherwise adopts or accepts the Contract Terms in a manner proposed by the Company.

### *v) Attachment*

A security interest in Goods created according to the Trading Terms will attach to the Goods at the time that the Customer obtains possession of them and not at any later time.

### *vi) Do all things necessary*

The Customer must do anything reasonably required by the Company to enable the Company to register the security interest as a PMSI and to maintain that registration.

### *vii) Separate financing statement may be registered if required.*

If the Company considers that it has or may have a security interest that is not a PMSI in relation to any Goods, it may register a financing statement in respect of that security interest (and that financing statement may be in addition to a financing statement registered by the Company in relation to a PMSI in the same Goods).

## **c) Confidential Information**

i) The Company and the Customer agree that neither party will disclose to an interested person or to any other person, any information of the kind described in section 275 (1) of the PPSA except that the Company may disclose that information to an interested person where section 275(7) of the PPSA applies.

ii) The Customer agrees that it will not authorize the disclosure of any information of the kind described in section 275 (1) of the PPSA.

## **d) Enforcement**

If the Customer fails to pay an amount owing when due or if it fails to perform any of its obligations in connection with the supply of Goods, the Customer agrees that the Company shall be entitled to exercise its enforcement rights and remedies as a secured party in accordance with the provisions of the PPSA including (without limitation) the rights contained in section 123 of the PPSA to seize the Goods by any method permitted by law. For these purposes, and without limiting any other rights of the Company under the PPSA as a secured party, the Customer further agrees:

- i) upon demand made by the Company, to immediately deliver up the Goods to the Company;
- ii) to irrevocably authorize the Company to enter any premises occupied by the Customer in order to search for, retrieve and remove those Goods to which the Company has title and which are the subject of a security interest as provided for by these Trading Terms;
- iii) to do all things necessary to immediately facilitate the Company's access to the Customer's premises and to

assist the Company to locate and identify the Goods;  
iv) to authorize the Company to resell the Goods seized and apply the proceeds of sale in payment of any monies that the Customer owes it;  
v) that in the event of any inconsistency with the provisions contained in section 123 of the PPSA and the provisions contained in this paragraph (d), the provisions of this paragraph (d) shall prevail.

**e) Application of certain PPSA provisions**

To the extent they apply, the following provisions of the PPSA confer rights on the Company: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134 (1) (retention of collateral). The Customer agrees that in addition to those rights, the Company shall, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Goods, not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that the Company may do so in any manner it sees fit including (in respect of dealing or disposing) by private or public sale, lease or licence.

**f) Contracting out provisions**

To the extent that Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest under or in connection with these Trading Terms, the following provisions of the PPSA do not apply and for the purposes of section 115 of the PPSA and are "contracted out" of these Trading Terms in respect of all Goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires the Company to give a notice to the grantor); section 96 (retention of accession); section 125 (obligation to dispose of or retain collateral); section 121(4) (enforcement of liquid assets- notice of grantor); section 130 (notice of disposal to the extent it requires the Company to give notice to the Customer); section 129 (2) & (3) (d) (contents of statement of account after disposal); section 132 (4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).

**g) Notices**

*i) PPSA Notices*

The Customer agrees that the Company does not need to give the Customer any notice under the PPSA (including without limitation a notice of a verification statement received from the Registrar) unless the notice is required by the PPSA and that requirement cannot be excluded.

*ii) Where default*

In the event of a default by the Customer in performing of any of its obligations in connection with a supply of Goods under the Trading Terms, the Customer agrees that (as between the parties to the Trading Terms) the Company is not obliged to give notice to any other secured party with interests in the same collateral or to any other third party of any enforcement or recovery action that it takes or which it may take with respect to its security interest in any of the Goods.

**21. Insolvency Events**

If the Customer:

- a) becomes insolvent or bankrupt;
  - b) is the subject of an application to wind up, or if a Liquidator, Provisional Liquidator, Receiver, a Receiver and Manager, or an Administrator is appointed with respect to the Customer or any of the Customer's assets;
  - c) makes an arrangement or composition with the creditors of the Customer or attempts to make such an arrangement or composition;
  - d) is unable to pay their debts as they fall due;
  - e) fails to comply with a statutory demand made under the Corporations Act 2001 (Cth) for payment of a debt;
  - f) ceases business;
  - g) has execution levied against any of their assets; or
  - h) has a mortgagee Liquidator, Provisional Liquidator, Receiver, Receiver and manager or Administrator enter or seek to enter into possession of any of its assets,
- then any monies actually or contingently owing to the Company at that time under any contract formed on these Trading Terms (including any amounts which would not otherwise be payable until a later date or dates) are immediately due and payable (without the need for any demand by the Company).

## **22. Force Majeure**

- a) The Company may suspend any or all of its obligations to the Customer that are affected by any act of God, fire, flood, storm, earthquake, strike, lockout, trade dispute, breakdown, theft, crime, delays in shipping, or the inability of the Company to procure necessary materials or articles preventing or retarding performance of the contract or any other cause not reasonably within the control of the Company (each a **"Force Majeure Event"**) and the Company is not responsible for any delay, default, loss or damage due to any Force Majeure Event.
- b) When a Force Majeure Event ceases to affect the performance of any of the Company's obligations, the Company must lift any suspension of those obligations that it makes under clause 22 (a).

## **23. Certain Goods are not to become fixtures**

- a) The Customer acknowledges and agrees that it is the intention of the parties that:
- i) Where the Goods are or might be characterized as fixtures to land, including, without limitation, where the Goods consist of air conditioning units, heating and cooling units and any associated equipment, machines, ducting, piping, materials or supplies; or
  - ii) The Goods rest by their own weight on the land then the following provisions are to apply.
- b) That until the Customer has paid for any of the Goods in full, the Goods are taken to be personal property of the Company and not fixtures despite having been connected to an electricity point, gas supply outlet, plumbing connection or another appliance or otherwise affixed to land.
- c) In the event of a default by the Customer under these Trading Terms, that in addition to the enforcement provisions set out in clause paragraph 20 d), if the Goods can be removed without causing significant damage to the premises, the Customer consents to the Company and any authorized contractor acting on behalf of the Company entering upon the premises of the Customer or any premises where the Goods are located or have been installed for the purposes of disconnecting them from an electricity point, plant or generator, gas supply outlet, plumbing connection or another appliance (as the case may be) and removing and retrieving the Goods.
- d) In the event of the Company exercising its rights under sub clause 23 c), the Customer:
- i) must not make any claim against the Company; and
  - ii) must indemnify the Company against any claim by any third party (including without limitation the owner of the relevant property), in contract, tort (including negligence) or otherwise arising from or in connection with the exercise of those rights including without limitation for the cost of making good the premises arising from or connected with the removal of the Goods or for any loss or damage (whether direct or indirect) suffered by the Customer or any third party.

## **24. Advice**

Any advice, recommendation, information, assistance or service provided by the Company relating to the performance of the Goods are estimates only. The Company is not liable for any damage or direct, indirect or consequential loss suffered by the Customer as a result of reliance upon such advice, recommendation, information, assistance or service.

## **25. Waiver**

- a) A waiver by the Company of any breach of these Trading terms shall not constitute a waiver of any other breach of such provision or any other provisions;
- b) No delay or failure to act is a waiver of any of the provisions herein contained and
- c) No waiver is effective unless in writing. A waiver of a breach is not a waiver of any other breach.

## **26. Sub Contracting**

The Company reserves the right to sub contract the supply and delivery of the whole or any part of the Goods or of any materials or services to be supplied.

## **27. Laws, Regulations, Permits etc.**

The Customer shall obtain all permits, licences and give all notices required to be given and shall pay all fees, deposits and taxes required to be paid and shall comply with all laws, by laws or regulations in any way relating to the manufacture, supply or delivery of the Goods.

## **28. Severance**

If any provision of the Order or of these Trading Terms is determined to be void by any court of competent jurisdiction, the such a determination shall not affect any other provision contained in the Order or the Trading Terms and each such other provision shall remain in full force and effect.

### **29. Future Dealings**

The terms and conditions specified in these Trading Terms shall be incorporated by implication and conduct into all future agreements by the Company to supply Goods to the Customer.

### **30. Certificate**

A certificate of the Customer's liability under any contract or contracts formed on these Trading Terms, signed by an officer of the Company, is prima facie evidence of the Customer's liability to the Company under these Trading Terms as at the date of the certificate.

### **31. Termination**

- a) Either party may terminate the arrangements under these Trading Terms by not less than 30 days notice to the other or immediately by notice to the other party if the other party is subject to an Insolvency Event.
- b) Upon termination all amounts actually or contingently owing by the Customer to the Company are immediately due and payable and the Customer shall immediately on demand deliver up to the Company all Goods purchased from the Company for which it has not paid.

### **32. Time**

Time is of the essence for payment of any monies owed by the Customer to the Company pursuant to the provisions specified in these Trading Terms.

### **33. Jurisdiction**

- a) These Trading Terms are governed by the laws of the State of Victoria.
- b) The parties submit to the non-exclusive jurisdiction of the Courts of Victoria in relation to any dispute or claim arising under or in connection with the supply of Goods or otherwise concerning these Trading Terms.

### **34. Notices**

- a) Any notice required by or contemplated by these Trading Terms must be in writing in the English language.
- b) Any notice by one party to the other shall be sufficiently served if served:
  - i) personally;
  - ii) by facsimile transmission to the number specified in the application made to the Company by the Customer to establish the arrangements under these Trading Terms or as otherwise notified to the other party, with a transmission confirmation receipt marked "OK";
  - iii) by e-mail to the address specified in the application made to the Company by the Customer to establish the arrangements under these Trading Terms or as otherwise notified to the other party, if the e-mail is acknowledged by the recipient; or
  - iv) by pre-paid post to the party to be served at the registered office of the party or to the address specified in the application made to the Company by the Customer to establish the arrangements under these Trading Terms or as otherwise notified to the other party, (in which case it is taken to be received 3 days after the date of posting).

### **35. Miscellaneous**

- a) ) These Trading Terms shall bind the Company and the Customer and their respective successors and permitted assigns.
- b) The Customer may not assign any of its rights or obligations under these Trading Terms without the prior written consent of the Company.