

## TERMS AND CONDITIONS - SUPPLY OF GOODS AND/OR SERVICES

To-Cool Pty Ltd ACN 074 556 960 trading as Tropicool Refrigeration & Airconditioning ('the Supplier', 'We' and 'Us') offers the sale and supply of air conditioning and/or refrigeration goods and/or services ('the Supply') to you ('the Customer' and 'You') on the Terms and Conditions ('Terms') set out below.

### 1. APPLICATION

These Terms govern any Supply by Us to You.

### 2. QUOTATIONS, PRICES, GST & ORDERS

- (a) Any quotation that We give to You is a mere invitation to treat and does not constitute a contractual offer.
- (b) Any quotation that We give to You shall be valid for **30 days** after issue, however We may in our absolute discretion withdraw a quotation at any time by notice in writing to You.
- (c) Prices included in the quotation are based on the specification, drawings and/or requests provided to Us by You. Should the specification, drawings and/or requests change We reserve the right to vary the quotation price by notice in writing to You.
- (d) All prices are exclusive of Goods and Services Tax (**GST**) unless otherwise stated. You are required to pay GST in addition to the price of the Supply.
- (e) Your acceptance of a quotation provided to You by Us is provided by:
  - (i) You signing and returning the quotation form to Us; and
  - (ii) You paying to Us any amounts specified in the quotation at the time and in the manner specified in the quotation.
- (f) A contractual offer for Us to make a Supply to You, other than by way of a quotation, is deemed to be accepted by You requesting the Supply and You accepting the Supply.

### 3. PAYMENT

The terms of Your payment to Us for the Supply is as follows:

- (a) We will provide You with a Tax Invoice (**Invoice**) for the

Supply.

- (b) The Invoice shall amongst other matters specify:
  - (i) the price of the Supply;
  - (ii) the GST payable on the price of the Supply;
  - (iii) the total amount You must pay Us being the total of the price of the Supply (less any amounts You have paid to Us prior to the issue of the Invoice) and the amount of GST payable thereon (**Balance**); and
  - (iv) the methods by which You may pay the Balance to Us.
- (c) You must pay Us the Balance within **7 days** of the date of an Invoice being issued to You by Us unless otherwise agreed in writing with Us.

### 4. INTEREST

We reserve the right to charge interest on any Balance outstanding for more than **30 days** from the date the payment became due as specified in **clause 3(c)** above at the rate of **2.5%** per month (which interest shall accrue from the date the Balance became due and payable by You to the date of the Balance being paid You).

### 5. ADMINISTRATION FEE

If any Balance remains outstanding for more than **14 days** from the date the payment became due as specified in **clause 3(c)** above We reserve the right to levy an administration fee of **\$15.00 per month** which amount shall become immediately due and payable by You to Us.

### 6. DEFAULT & CONSEQUENCES

- (a) If You default in the payment of the Balance or any other amounts due and payable to Us under these Terms, You shall indemnify Us from and against any and all costs and expenses incurred by Us in recovering such amounts, including but not limited to any legal fees and costs, court fees, bailiff/sheriff fees, debt collection agency fees and/or registration

fees.

- (b) Without prejudice to any other rights or remedies which We may have at law or under these Terms, if at any time You are in breach of these Terms (including but not limited to those relating to payment of the Balance or any other amounts due and payable to Us under these Terms), We reserve the right to immediately suspend or terminate the Supply to You and We will not be liable to You for any loss or damage that You or any other person may suffer because We exercised our rights under this **clause 6(b)**.
- (c) Without prejudice to any other rights or remedies which We may have at law or under these Terms We shall be entitled to terminate the Supply and all amounts owing to Us shall, whether or not due for payment, become immediately payable in the event that:
  - (i) You are in breach of these Terms (including but not limited to those relating to payment of the Balance or any other amounts due and payable to Us under these Terms);
  - (ii) in our opinion You will be unable to meet your payment obligations as and when they become due;
  - (iii) You die or become permanently incapacitated;
  - (iv) You become insolvent, convene a meeting with your creditors or propose or enter into an arrangement with creditors, or make an assignment for the benefit of your creditors; or
  - (v) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of You or any asset of You, and We will not be liable to You for any loss or damage that You or any other person may suffer because We exercised our rights under this **clause 6(c)**.

### 7. SECURITY FOR COSTS

- (a) It is a condition of the agreement between You and Us that You charge all of your estate and interest in any property (both real

and personal) which You own now or at any future date as security for payment of any monies pursuant to these Terms (including but not limited to interest on any outstanding amounts and any administration fees charged to You pursuant to **clause 5**) owed by You to Us and all future money owed by You as a result of any future Supply to You.

- (b) You irrevocably authorise Us to register a caveat against any property which You own now or at any future date as security for payment of any monies pursuant to these Terms (including but not limited to interest on any outstanding amounts and any administration fees charged to You pursuant to **clause 5**) owed by You to Us and all future money owed by You as a result of any future Supply to You.

**8. CUSTOMER CREDIT & CREDIT INFORMATION**

- (a) You may provide Us with a completed Customer Credit Application and Guarantee (**Application**) to apply for credit from Us which We may in our absolute discretion accept or reject.
- (b) If your Application is accepted We shall provide you with written notice thereof.
- (c) You irrevocably consent and agree to Us obtaining a credit report containing personal credit information about You from a credit reporting agency in relation to any credit that We provide You.
- (d) You irrevocably agree and consent that We may give information about You to a credit reporting agency for the following purposes:
  - (i) to obtain a consumer credit report about You; and/or
  - (ii) to allow the credit reporting agency to create or maintain a credit information file containing information about You.
- (e) You irrevocably consent and agree that We may exchange information about You with those credit providers either named as trade referees by the You or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - (i) to assess an Application for Us to give You credit;
  - (ii) to notify other credit providers of a default by You; and
  - (iii) to exchange information with other credit providers as to the status of a credit account, where You are in default with

any other credit providers.

- (f) You irrevocably agree and consent to Us being given a consumer credit report to collect overdue payment on commercial credit under the *Privacy Act 1988* (Cth).
- (g) You agree that personal credit information provided by or about You may be used and retained by Us for the following purposes and for other purposes as shall be agreed in writing between You and Us or as required by law from time to time:
  - (i) analysing, verifying and/or checking Your credit, payment and/or status in relation to the Supply; and
  - (ii) the processing of any payment instructions, direct debit facilities and/or credit facilities requested by You.

**9. DELIVERY & RISK**

- (a) Any periods, dates and/or times that We may provide to You for the delivery and/or installation of any air conditioning and/or refrigeration goods (**Goods**) are estimates only and We accept no liability whatsoever for any loss or damage suffered by You or any other person for any failure or delay in the delivery and/or installation of any Goods. You are not relieved of any obligation to accept or pay for any such Goods by reason of any delay in delivery and/or installation. Goods may be delivered and/or installed by instalments at the discretion of Us.
- (b) In the event that We are unable to deliver and/or install any Goods for any reason whatsoever We reserve the right to cancel the Supply by notice in writing to You.
- (c) We shall use our best endeavours to comply with any reasonable directions that you may provide Us for the delivery of any Goods. In the event that, in our absolute discretion, We are unable to comply with such directions We shall deliver the Goods to You in a manner nominated by Us.
- (d) Notwithstanding **clause 10** risk in any Goods passes to You immediately upon delivery and We shall not thereafter accept any liability whatsoever for any loss or damage to the Goods. You are responsible for insurances for theft, damage, loss or otherwise immediately from delivery.
- (e) You shall accept delivery of any Goods promptly and You will be responsible for any and all demurrage, storage and/or costs of re-delivery incurred by Us as a result of Your failure to do so.

**10. RETENTION OF TITLE**

- (a) All Goods supplied, delivered and/or installed by Us remain the property of Us until the payment of any and all monies due and payable to Us.
- (b) It is the intention of Us and irrevocably agreed to by You that the legal right, title and interest of any Goods supplied, delivered and/or installed by Us shall not pass to You until You have met all of Your obligations to Us in accordance with these Terms.
- (c) Without prejudice to any other rights or remedies which We may have at law or under these Terms, in the event of a default by You;
  - (i) the Supplier and/or its agents may without notice to You enter Your premises or any premises under Your control for the purposes of removing and recovering any Goods supplied, delivered and/or installed by Us; and
  - (ii) We may re-sell any Goods supplied, delivered and/or installed by Us and which have been recovered by Us.
- (d) Receipt by Us of any form of payment other than cash shall not be deemed to be payment and until that form of payment has been honoured, cleared or recognised and our ownership or rights in respect of any Goods supplied, delivered and/or installed by Us shall continue.
- (e) You agree that where practicable:
  - (i) the Goods supplied, delivered and/or installed by Us shall be kept separate and identifiable until We have received payment of all monies due under these Terms and all other obligations under these Terms have been met;
  - (ii) until such time as ownership of the Goods supplied, delivered and/or installed by Us shall pass from Us to You, We may give notice in writing to You to return any or all of the Goods supplied, delivered and/or installed by Us. Upon such notice, Your rights to obtain ownership or any other interest in the Goods supplied, delivered and/or installed by Us shall cease; and
  - (iii) We shall have the right of stopping the Goods supplied, delivered and/or installed by Us in transit whether or not delivery has been made.

**11. PERSONAL PROPERTIES AND SECURITIES ACT 2009 (CTH) (PPSA)**

- (a) Defined terms in this **clause 11**

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- have the same meaning as given to them in the PPSA.
- (b) Us and You acknowledge that these Terms constitute a Security Agreement and gives rise to a Purchase Money Security Interest (**PMSI**) in favour of Us over the Goods supplied or to be supplied to You as Grantor pursuant to these Terms.
- (c) The Goods supplied or to be supplied under these Terms fall within the PPSA classification of 'Other Goods' acquired by You pursuant to these Terms.
- (d) Us and You acknowledge that We, as Secured Party, are entitled to register our interest in the Goods supplied or to be supplied to You, as Grantor, under these Terms on the PPSA Register as Collateral.
- (e) You waive your right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by You, as Grantor, to Us.
- (f) You agree to indemnify Us on demand for all costs and expenses, including but not limited to legal fees and costs, associated with the:
- (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of Us; and
  - (ii) enforcement or attempted enforcement of any Security Interest granted to Us by You.
- (g) You agree:
- (i) that, to the extent permitted at law, nothing in sections 130 to 143 of the PPSA will apply to these Terms or the Security under these Terms; and
  - (ii) to waive Your right to do any of the following under the PPSA:
    - (A) receive notice of removal of an Accession under section 95;
    - (B) receive notice of an intention to seize Collateral under section 123;
    - (C) receive notice of disposal of Collateral under section 130;
    - (D) receive a Statement of Account if there is no disposal under section 130(4);
    - (E) receive notice of retention of Collateral under section 135;
    - (F) redeem the Collateral under section 142;
    - (G) reinstate the Security Agreement under section 143;
    - (H) object to the purchase of the Collateral by the Secured Party under section 129; and
- (l) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- 12. WARRANTIES**
- (a) Our liability in respect of a breach of a consumer guarantee for any Goods not of a kind ordinarily acquired for personal, domestic or household use is limited, to the extent permissible by law and at Our option;
- (i) in relation to the Goods:
- (A) the replacement of the products or the supply of equivalent products;
  - (B) the repair of the products;
  - (C) the payment of the cost of replacing the products or of acquiring equivalent products; or
  - (D) the payment of the cost of having the products repaired.
- (ii) in relation to Our services:
- (A) the supply of the services again; or
  - (B) the payment of the cost of having the services supplied again.
- (b) To the fullest extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and We not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate You for:
- (i) any increased costs or expenses;
  - (ii) any loss of profit, revenue, business, contracts or anticipated savings;
  - (iii) any loss or expense resulting from a claim by a third party; or
  - (iv) any special, indirect or consequential loss or damage of any nature whatsoever, caused by Our failure to complete or delay in completing the order to deliver the Goods.
- indirectly from or in connection with any breach of any of these Terms by You or your representatives.
- (b) You must notify Us in writing of any change in your ownership within **7 days** thereof and to the full extent permitted by law, You will indemnify Us and keep Us forever indemnified from and against any and all liability, loss or damage that We may sustain as a result of a breach of this **clause 13(b)**.
- 14. GENERAL**
- (a) Us and You agree that these Terms shall, in all respects, be governed by, and construed and interpreted in accordance with, the laws of the State of Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts and Tribunals of Western Australia.
- (b) These Terms contain the entire agreement between Us and You as to its subject matter and supersedes any and all prior representations, verbal or written agreements, arrangements and understandings between Us and You as to its subject matter.
- (c) These Terms may only be varied by agreement in writing between Us and You.
- (d) If any clause in these Terms is held to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, the validity and enforceability of the remaining clauses shall not be affected and each remaining clause will be valid and enforceable to the fullest extent permitted by law.
- (e) No failure to exercise and no delay in exercising any right, power or remedy under these Terms will operate as a waiver, and, no single or partial exercise of any right, power, or remedy will preclude any other, or further, exercise of that, or any other, right, power or remedy.