



**Suppliers of Air Conditioning & Refrigeration  
Control Equipment**

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***Terms Of Trade***

**1. *Definitions***

- 1.1 "MJB" means MJB Controls Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of MJB Controls Pty Ltd.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by MJB to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Equipment" shall mean all Equipment including any accessories supplied on hire by MJB to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by MJB to the Customer.
- 1.5 "Price" means the Price payable for the Goods as agreed between MJB and the Customer in accordance with clause 4 below.

**2. *Acceptance***

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with MJB's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and MJB.

**3. *Change in Control***

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

**4. *Price and Payment***

- 4.1 At MJB's sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by MJB to the Customer; or
  - (b) the Price as at the date of delivery of the Goods according to MJB's current price list; or
  - (c) MJB's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of ninety (90) days.
- 4.2 MJB reserves the right to change the Price if a variation to MJB's quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional work required due to hidden or unidentifiable difficulties or as a result of increases to MJB in the cost of materials and labour or as a result of fluctuations in currency exchange rates) will be charged for on the basis of MJB's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 Prices are subject to change without notice. MJB accepts orders on the condition that each order will be invoiced at the current Price at the date of dispatch.

- 4.4 The Price quoted includes standard packing, unless otherwise stated. Additional packing requested by the Customer or deemed necessary by MJB will be charged for in addition to the Price quoted.
- 4.5 The minimum order value for Goods is \$50.00 where Goods are collected and charged to the Customer's account at MJB's address, and \$100.00 where Goods are delivered to the Customer's address and charged to the Customer's account.
- 4.6 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by MJB, which may be:
- (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Customer by MJB.
- 4.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and one half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and MJB.
- 4.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to MJB an amount equal to any GST MJB must pay for any supply by MJB under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer 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. Delivery of Goods**

- 5.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at MJB's address; or
  - (b) MJB (or MJB's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 5.2 At MJB's sole discretion the cost of delivery is in addition to the Price.
- 5.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then MJB shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 MJB may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by MJB to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and MJB will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

## **6. Risk**

- 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, MJB is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by MJB is sufficient evidence of MJB's rights to receive the insurance proceeds without the need for any person dealing with MJB to make further enquiries.
- 6.3 If the Customer requests MJB to leave Goods outside MJB's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

## **7. Title**

- 7.1 MJB and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid MJB all amounts owing to MJB; and
  - (b) the Customer has met all of its other obligations to MJB.

- 7.2 Receipt by MJB 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.
- 7.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 7.1 that the Customer is only a bailee of the Goods and must return the Goods to MJB on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for MJB and must pay to MJB the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for MJB and must pay or deliver the proceeds to MJB on demand.
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of MJB and must sell, dispose of or return the resulting product to MJB as it so directs.
  - (e) the Customer irrevocably authorises MJB to enter any premises where MJB believes the Goods are kept and recover possession of the Goods.
  - (f) MJB may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of MJB.
  - (h) MJB may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

**8. *Personal Property Securities Act 2009 (“PPSA”)***

- 8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by MJB to the Customer.
- 8.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which MJB may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, MJB for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of MJB;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of MJB;
  - (e) immediately advise MJB of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.4 MJB and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

- 8.7 Unless otherwise agreed to in writing by MJB, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Customer must unconditionally ratify any actions taken by MJB under clauses 8.3 to 8.5.
- 8.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## **9. *Security and Charge***

- 9.1 In consideration of MJB agreeing to supply the Goods, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2 The Customer indemnifies MJB from and against all MJB's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MJB's rights under this clause.
- 9.3 The Customer irrevocably appoints MJB and each director of MJB as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Customer's behalf.

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

- 10.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify MJB in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow MJB to inspect the Goods.
- 10.2 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**).
- 10.3 MJB acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, MJB makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. MJB's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.5 If the Customer is a consumer within the meaning of the CCA, MJB's liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.6 If MJB is required to replace the Goods under this clause or the CCA, but is unable to do so, MJB may refund any money the Customer has paid for the Goods.
- 10.7 If the Customer is not a consumer within the meaning of the CCA, MJB's liability for any defect or damage in the Goods is:
  - (a) limited to the value of any express warranty or warranty card provided to the Customer by MJB at MJB's sole discretion;
  - (b) limited to any warranty to which MJB is entitled, if MJB did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 10.8 Subject to this clause 10, returns will only be accepted provided that:
  - (a) the Customer has complied with the provisions of clause 10.1; and
  - (b) MJB has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 10.9 Notwithstanding clauses 10.1 to 10.8 but subject to the CCA, MJB 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 Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;

- (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by MJB;
  - (e) fair wear and tear, any accident, or act of God.
- 10.10 MJB may in its absolute discretion accept non-defective Goods for return in which case MJB may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 10.11 Notwithstanding anything contained in this clause if MJB is required by a law to accept a return then MJB will only accept a return on the conditions imposed by that law.

#### **11. *Intellectual Property***

- 11.1 Where MJB has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of MJB.
- 11.2 The Customer warrants that all designs, specifications or instructions given to MJB will not cause MJB to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify MJB against any action taken by a third party against MJB in respect of any such infringement.

#### **12. *Default and Consequences of Default***

- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at MJB's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 If the Customer owes MJB any money the Customer shall indemnify MJB from and against all costs and disbursements incurred by MJB in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, MJB's collection agency costs, and bank dishonour fees).
- 12.3 Without prejudice to any other remedies MJB may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions MJB may suspend or terminate the supply of Goods to the Customer. MJB will not be liable to the Customer for any loss or damage the Customer suffers because MJB has exercised its rights under this clause.
- 12.4 Without prejudice to MJB's other remedies at law MJB shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to MJB shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to MJB becomes overdue, or in MJB's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

#### **13. *Cancellation***

- 13.1 MJB may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice MJB shall repay to the Customer any money paid by the Customer for the Goods. MJB shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by MJB as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 13.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

#### **14. *Privacy Act 1988***

- 14.1 The Customer agrees for MJB to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by MJB.

- 14.2 The Customer agrees that MJB may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 14.3 The Customer consents to MJB being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The Customer agrees that personal credit information provided may be used and retained by MJB for the following purposes (and for other purposes as shall be agreed between the Customer and MJB or required by law from time to time):
- (a) the provision of Goods; and/or
  - (b) the marketing of Goods by MJB, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 14.5 MJB may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 14.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
  - (c) advice that MJB is a current credit provider to the Customer;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of MJB, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
  - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Customer by MJB has been paid or otherwise discharged.

## **15. *Loan / Hire / Evaluation***

- 15.1 "Equipment" shall mean Goods supplied by MJB to the Customer for the purpose of loan, hire or evaluation.
- 15.2 The Equipment shall at all times remain the property of MJB and is returnable on demand by MJB. In the event that the Equipment is not returned to MJB in the condition in which it was delivered MJB retains the right to charge the Price of repair or replacement of the Equipment.
- 15.3 The Customer shall;
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment; and
  - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or

- number on or in the Equipment or in any other manner interfere with the Equipment; and
- (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by MJB to the Customer.
- 15.4 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, MJB's interest in the Equipment and agrees to indemnify MJB against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

## **16. General**

- 16.1 The failure by MJB to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect MJB'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.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which MJB has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 16.3 Subject to clause 10 MJB shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by MJB of these terms and conditions (alternatively MJB's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 16.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by MJB nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.5 MJB may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 16.6 The Customer agrees that MJB may amend these terms and conditions at any time. If MJB makes a change to these terms and conditions, then that change will take effect from the date on which MJB notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for MJB to provide Goods to the Customer.
- 16.7 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.
- 16.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorizations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.