



Engineered Thermal Systems Pty. Limited
T/As ETS Refrigeration
20 Molonglo Mall
Newcastle Street
Fyshwick ACT 2609

IMPORTANT ACKNOWLEDGMENTS

All goods and services are supplied by Engineered Thermal Systems Pty Ltd (Company) to another party (Customer) on the terms and conditions set out in this document (Terms), together with the quotation provided separately and in writing (Quote). No change to these Terms or to the Quote will have any effect unless in writing and agreed to in writing by the Parties. The Customer warrants and acknowledges that:

- all of the information it has supplied to the Company is true and correct and it will immediately notify the Company if there is any change in the information it has provided;
- the Company may disclose any information provided by the Customer to a credit reporting agency and may obtain and rely on any report it obtains from them in relation to the Customer;
- it has read the Terms and Conditions and understands fully their nature and effect and has been given the opportunity to obtain independent advice in relation to the Terms and Conditions;
- if credit is granted to the Customer, the Customer will be bound by the Terms and Conditions attached and will use the credit wholly or predominantly for business or investment purposes.

TERMS & CONDITIONS

1. Quotation and Orders

- 1.1 Unless previously withdrawn by the Company, a Quote remains valid from the date of the Quote, unless stated otherwise on the Quote. A quote is not an offer to sell by the Company, and no contract arises from a Quote until the Customer's order has been accepted by the Company.
- 1.2 The Company will not be bound by any condition attaching to the Customer's acceptance of the Quote, unless expressly accepted in writing.
- 1.3 Any orders for which credit is requested by the Company are subject to approval of the Company's credit department, and acceptance by the Customer of all conditions imposed on the granting of credit by the Company. The Company may at any time alter or suspend credit, refuse shipment or cancel unfulfilled orders when in the Company's opinion, the financial conditions of the Customer or the status of the Customer's account warrant it.
- 1.4 Changes or cancellations to orders requested by the Customer will not be effective unless accepted in writing by the Company, and the Customer is liable for all costs, expenses, loss and liabilities suffered by the Company in connection with any change to an order.

2. Pricing

- 2.1 Prices quoted by the Company:
 - (1) do not include GST;
 - (2) are applicable to that Quote only; and
 - (3) do not include cost of delivery or fuel surcharge (if applicable).
- 2.2 Notwithstanding Clause 1.1, the Company
 - (1) is entitled to vary the Quote for the goods and services at any time prior to delivery and installation if the cost to the Company in performing the contract is increased by reason of delivery of the goods and services or work completed outside normal working hours at the request of the Customer, or to an address other than that originally specified by the Customer;
 - (1) is entitled to vary the quoted price for imported goods at any time prior to delivery if the currency used to quote has shifted by more than 2.5% between the date quoted and the date of invoice; and
 - (2) reserves the right to charge prices which apply to goods and services at the time of delivery.

3. GST

Should any Goods & Services Tax as levied under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended) and any other tax, fee, levy or duty imposed by any competent authority be payable on any of the Goods supplied by the Company, such tax, fee, levy or duty will be to the Customer's account and shall be calculated using the rates and methods of assessment in force at the time of delivery. The Customer is liable for any other applicable tax, including, without limitation withholding tax.

4. Terms of Payment

- (1) Where the Customer has a credit account with the Company, the invoice amount for the goods and services must be paid in full within thirty (30) days of the end of the month during which the goods and services were invoiced. In all other cases the quoted price for the goods and services must be paid within 14 days after receipt of an invoice for the works.
- (2) The Company may at the Company's discretion, provide one invoice for the whole of the works at practical completion of the quoted works, or monthly invoices if the works will take longer than one month to complete. For the purposes of this clause, "practical completion" means completion of the quoted works except for minor items requiring completion, which do not affect the operation and use of the goods by the Customer.

- (3) The Customer is not entitled to withhold payment or make any deduction from the quoted price of the goods and services in respect of any set off or counterclaim.
- (4) If the Customer fails to pay for any instalment of the goods, the Company may in its absolute discretion, but without prejudice to any other remedy it may have, postpone the fulfilment of its obligations under this order and under any other order with this Customer until such payment is made and charge to the Customer any extra expense incurred thereby.

5. Property in goods

- 5.1 Risk in goods supplied by the Company to the Customer will pass to the Customer immediately upon delivery to the Customer, into the Customer's custody or at the Customer's direction, whichever happens first. Notwithstanding the delivery of the goods to the Customer, full and absolute ownership of and title in the goods supplied by the Company to the Customer under these Terms shall not pass to the Customer until those goods have been paid for in full and in cleared funds.
- 5.2 Until the goods have been paid in full on or before the due date, the Customer:
 - (1) will hold any goods as bailee and fiduciary for the Customer;
 - (2) may not remove or change the manner in which the goods have been labelled by the Customer; and
 - (3) shall store the goods in a manner which shows clearly that they are the property of the Customer which supplied them;.
- 5.3 Where the order is for delivery of goods by instalments, property will not pass in any goods until payment has been made to the Company for the whole order.
- 5.4 The Customer irrevocably authorises the Company at any time to enter onto any premises upon which:
 - (1) the Company's goods are stored to enable the Company to inspect the goods;
 - (2) if the Customer has breached these Terms and Conditions, to reclaim the goods; and
 - (3) the Customer's records pertaining to the goods are held, to inspect and copy such records.and the Customer will indemnify the Company against any action claim or demand arising out of the exercise by the Company of its powers under this sub-clause.
- 5.5 In the event of a default, the Company may without prejudice to any of the Company's other rights, demand the immediate return of the goods at the Customer's expense.
- 5.6 The Customer and Company agree that the provisions of this clause apply notwithstanding any arrangement under which the Company grants credit to the Customer.

6. Delivery

- 6.1 Unless otherwise agreed in writing, the time of delivery is calculated from the date of the order. Although every effort is made by the Company to keep the delivery date promised, the Company assumes no liability for any loss or damage occasioned by delays in delivery or installation. Offers for delivery are subject to confirmation on receipt of order.
- 6.2 Unless otherwise agreed in writing, the Company is entitled to make delivery by instalments and to determine the route and manner of delivery of the goods.
- 6.3 The Company is entitled to deliver the goods to the premises notified by the Customer, even though those premises may be unattended by the Customer at the time of delivery.
- 6.4 The Company's delivery records will be prima facie proof of delivery of the goods to the Customer.
- 6.5 If the Company is prevented (directly or indirectly) from delivering the goods or any of them by reason of any act of God or strikes, lockouts, trade disputes, fire, breakdown, interruption of transport, governmental action or any other cause whatsoever outside its

control, the Company will be under no liability whatsoever to the Customer and will be entitled at its option either to terminate the order or to extend the time of its performance.

7. Liability

- 7.1 The Company makes no warranties, either express or implied in respect of supplied goods and services. To the extent that goods supplied are covered by a manufacturer's warranty, the Company will pass on to the Customer the benefit of the manufacturer's warranty.
- 7.2 Any service or advice which may be offered by the Company, its servants or agents to the Customer or its agents in connection with the supply of any goods or services, is rendered in good faith and the Company shall not be liable for any loss or damage arising from such service or advice.
- 7.3 For the avoidance of doubt, the Company will be under no liability whatsoever to the Customer for any loss, expense, injury or damage (including consequential loss, injury or damage) suffered or caused as a result of or arising out of any act or omission (whether negligent or otherwise) by the Company, its servants or agents or any person in any way related to or arising out of the supply of any goods or and services by the Company.

8. Performance of Services

- 8.1 Where the Company fails to provide any services, such as installation or training, on any estimated date it will provide the services within a reasonable time.
- 8.2 Where the Company is to provide services, the Customer must:
- (1) be responsible for providing clean, safe and proper access to and at the place where the services are to be provided ("Site");
 - (2) ensure the Site is properly prepared for the provision of services;
 - (3) provide safe and secure conditions and comply with any occupational, health and safety laws for the Company, its sub-contractors, employees or agents whilst providing the services.
- 8.3 The Company may, at its absolute discretion, opt not to provide the services if the conditions are, in its reasonable opinion, not work safe. The Company will not be liable to the Customer in those circumstances.
- 8.4 The Customer indemnifies the Company against any loss or damage suffered by the Company, its sub-contractors or employees as a result of provision of the services at the Site, except where the Customer is a consumer as defined in Australian Consumer Law and the Company has not used due care and skill.

9. Personal Property Securities Act 2009 (PPSA)

- 9.1 The Customer hereby acknowledges:
- (4) that these Terms and Conditions constitute a security agreement which creates a Security Interest, as that term is defined in the PPSA, in favour of the Company in all goods previously supplied by the Company to the Customer (if any) and all after acquired goods supplied by the Company to the Customer (or for the Customer's account) to secure the payment from time to time and at a time, including future advances; and
 - (5) that the Security Interest created by these terms is a Purchase Money Security Interest, as that term is defined in the PPSA.
- 9.2 The Customer acknowledges and agrees that the Company has given value for the Security Interest and the Company's Security Interest in the goods is effective and attaches to the goods immediately upon the Customer taking delivery of the goods. These terms shall apply notwithstanding anything express or implied to the contrary contained in the order.
- 9.3 The Customer undertakes to:
- (6) at its own cost, do anything which the Customer considers reasonably necessary to ensure that the Company's Security Interest in the goods attaches to the goods, is enforceable, perfected and otherwise effective and has the priority required by the Company;
 - (7) enable the Company to exercise or enforce any of its rights in relation to its Security Interest in the goods and the proceeds of those goods, or to perform any of its obligations under the PPSA;
 - (8) enable the Company to prepare, register or renew a financing statement, these Terms and Conditions on the Personal Property Securities Register.
 - (9) give the Company not less than 15 days written notice of any proposed change in the Customer's name and / or any other changes in the Customer's details (including changes in the Customer's address, facsimile number, email address, trading name or business practice);
 - (10) pay all costs incurred by the Company in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Terms and Conditions including executing subordination agreements;

- (11) be responsible for the full costs incurred by the Company (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA; and
- (12) waive any rights it may have under sections 115 of the PPSA upon enforcement.

- 9.4 The Purchaser must not, otherwise than in accordance with these Terms, create any Security Interest in the goods, or any property which constitutes "personal property" under the PPSA and becomes an accession to the goods, without the prior written consent of the Company.
- 9.5 The parties acknowledge and agree that, unless otherwise agreed to in writing by the Company, and to the extent permitted under the PPSA, the Customer waives the right to receive any notices, including a verification statement pursuant to section 157 of the PPSA, in respect of any financing statement or financing change statement relating to the Security Interest.
- 9.6 The Customer agrees that immediately on request by the Company, the Customer will procure from any persons considered by the Company to be relevant to its security position such agreement and waivers as the Company may at any time require.
- 9.7 Neither the Company nor the Customer shall disclose information of the kind mentioned in section 275(1) of the PPSA and the Customer will not authorise, and will ensure that no other party authorises, the disclosure of such information.

10. Default

- 10.1 If the Customer fails to pay the Company for any goods ordered by the due date or fails to comply with its obligation under this agreement:
- (1) the balance of any money owing by the Customer to the Company shall immediately become due and payable by the Customer;
 - (2) the Company shall be entitled to charge interest at 10% per annum calculated daily, on any money due and owing and payable by the Customer to the Company;
 - (3) the Company may withhold the delivery of any goods already ordered or cancel any order still being placed;
 - (4) the Customer authorises the Company to retake possession of any goods that have been supplied but not paid for (**Retained Goods**);
 - (5) the Company is under no obligation to dispose of the Retained Goods within a reasonable time pursuant to section 125 of the PPSA.
 - (6) the Customer has no right to redeem the Retained Goods pursuant to section 142 of the PPSA.
 - (7) the Customer has no right to reinstate the agreement made by virtue of these Terms and Conditions pursuant to section 143 of the PPSA.
 - (8) The Customer waives its rights to receive:
 - a) a notice pursuant to section 95 of the PPSA of the Company's intention to remove the Security Interest which has become an accession pursuant to the PPSA;
 - b) a notice pursuant to section 118 of the PPSA of the Company's decision to enforce the Security Interest under paragraph 117(2)(b) of the PPSA;
 - c) a notice pursuant to section 121(4) of the PPSA of any action the Company takes in accordance with subsection 120(2) of the PPSA;
 - d) a notice pursuant to section 130 of the PPSA that the Company proposes to dispose of the Retained Goods;
 - e) details of any amounts paid to other secured parties in a statement of account provided by the Company pursuant to section 132(3)(d) of the PPSA;
 - f) a statement of account pursuant to section 132(4) of the PPSA; and
 - g) a notice pursuant to section 135 of the PPSA of the Company's proposal to retain the Retained Goods.
 - (9) The Customer authorises the Company to enter upon any premises on which Goods supplied by it are located.

11. Customer's Indemnity

- 11.1 The Customer indemnifies the Company, its employees, agents and subcontractors against:
- (1) all damages, losses, expenses and costs for any claims made against them whether directly or indirectly sustained in any way in connection with these Terms and Conditions. The indemnity includes any claim by any third party for loss or damage to any goods, property, injury or death of any person or economic loss arising out of or relating to the goods or delay in supply of the goods; and
 - (2) all reasonable costs and disbursements which the Company may incur in recovering any sums due to be paid by the Customer to the Company, including but not limited to any debt recovery agency fees, court fees or legal fees, all mercantile

agents fees incurred by the Company in recovering or attempting to recover all amounts outstanding and payable under these Terms and Conditions, any GST payable by the Company and any dishonour or bank fees incurred by the Company relating to payments made by the Customer.

12. Limitation of Liability

- 12.1 Section 64A of the *Competition and Consumer Act 2010 (Cth)* (Act) has the effect of enabling a corporation which has contracted to supply goods, and services, to limit its liability in certain circumstances for breach of a guarantee implied in the Act.
- 12.2 Subject to the qualification in Section 64A of the Act, the Company's liability for breach of a guarantee implied in Division 1 of Part 3-2 of the Act in the case of goods or services supplied to the Customer, shall be limited to, in the case of goods, any one or more of the following:
- (1) replacement of the goods or the supply of equivalent goods;
 - (2) the repair of the goods;
 - (3) the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (4) the payment of the cost of having the goods repaired, or in the case of services:
 - (5) the supplying of the services again; or
 - (6) the payment of the cost of having the services supplied again.
- 12.3 Except as required by law and as herein provided all implied guarantees with respect to the goods and services supplied by the Company to the Customer including, without limitation guarantees as to quality, fitness for purpose, and sale by sample are excluded. In particular, the Company does not accept any liability for any direct, indirect or consequential loss or damage caused to the Customer or any other person which arises out of the negligence or carelessness of the Company or any of its employees, agents, contractors, suppliers or servants, or which arises directly or indirectly from the use of any information, advice, or recommendation of any Company employee or from any alleged breach of duty in respect of any Goods or services supplied by the Company.
- 12.4 The Company shall not be liable for any damage arising from the Goods not being fit for the purpose for which the Goods may be used or supplied or in respect of any claim that the Goods were not of merchantable quality or do not correspond with the description on the Company's invoice and/or the Company's packaging.
- 12.5 Nothing in this clause shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of Goods or services of all or any of the provision of Part 3-2 of the Act or any relevant or similar State or Federal legislation which by law cannot be excluded, restricted or modified.
- 12.6 The Company is not responsible for and does not accept any liability in relation to discrepancies between estimates of quantities it may have prepared based on plans or other information given by or on behalf of the Customer and quantities the Customer actually requires. The Customer warrants that it has verified and in any event accepts responsibility for the accuracy of quantities ordered as being in accordance with its requirements.
- 12.7 The Customer warrants to the Company that it will not rely on representations or advice given by the Company or its employees in connection with the design, installation or use of goods sold and agrees that the Company shall not be liable for the consequences of such representations or advice even if made or given negligently.
- 12.8 It is a condition of sale that the descriptions and specifications issued by the Company or other printed literature are given for identification purposes only and (except to the extent that the Goods shall comply with the standards set out in such descriptions or specifications) shall not be taken as implying or giving any undertaking as to quality or fitness for any particular purpose whatsoever.
- 12.9 The Company shall not be liable for delay in delivery arising from any cause, including negligence on its part. The Customer shall not be relieved from any obligation to accept or pay for goods by reason of delay in delivering or dispatch. In no event shall the Company be responsible for any loss of profits, penalties, expenditure or damage incurred by the Customer arising out of any delay in delivery.
- 12.10 The Company will not accept any claim by the Customer for failure to deliver, short delivery, supply of incorrect goods, faulty workmanship or pricing errors.

13. Customer Insolvency

- 13.1 If the Customer:
- (1) becomes bankrupt;
 - (2) is the subject of an application to wind up the Customer, or if a receiver, a receiver and a manager, or an administrator is appointed in respect of the Customer or any of the Customer's assets; or
 - (3) makes an arrangement for composition with the Creditors of the Customer or attempts to make such an arrangement or composition; or
 - (4) is unable to pay the debts of the Customer as they fall due; or

(5) ceases business; or

(6) has a mortgagee enter or seek to re-possess asset of the Customer,

then all money then owing to the Company (including any amounts which would not otherwise be payable until a later date or dates) shall become immediately due and payable.

14. Force Majeure

- 14.1 Agreements and deliveries may be suspended by the Company in the event of any strike, lockout, trade dispute, fire, tempest, breakdown, theft, crime, force majeure or the inability of the Company to procure necessary materials or articles preventing or inhibiting the performance of the agreement by the Company.
- 14.2 No responsibility is accepted by the Company for any default, delay, loss or damage due to any of the above causes or to any other cause beyond the control of the Company.
- 14.3 In such circumstances the Company shall be entitled to determine the agreement with the Customer and the Customer shall not have any claim for damages arising out of the cancellation.

15. Time

- 15.1 So far as the Customers obligations under these Terms and Conditions are concerned, time shall be of the essence.

16. Notices

- 16.1 Any notice by one party to the other will be sufficiently served if served personally or by facsimile transmission or by e-mail. A notice will be deemed to have been served immediately upon transmission if served personally, by e-mail or facsimile.
- 16.2 If posted by pre-paid post to the party to be served at the registered office of that party or its last known place of business, it shall be deemed to have been received within 2 days of the date of posting if served by post.

17. Use of Personal Information

- 17.1 The Company is committed to prompt and open communication with the Customer to achieve the aims of this agreement. The Company may, subject to its obligations under the *Privacy Act 1988*, collect, store and use and disclose to its related companies, partners, contractors, and agents in any jurisdiction, information about the Customer and the Customer's business reasonably required for those purposes or in connection with any lawful right of the Company.
- 17.2 The Company abides by the Australian Privacy Principles set out in the *Privacy Act 1988*.

18. Assignment

- 18.1 The Customer may not assign its interest in this agreement or any part of it without the prior written consent of the Company. The Company may assign any of its rights or obligations under this agreement.

19. Governing Law and Jurisdiction

- 19.1 This agreement is governed by the law of the Australian Capital Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory. Neither party may object to the Australian Capital Territory as the forum for any proceeding.

20. Notification of Change

- 20.1 The Customer must notify the Company in writing of any change to its ownership or management structure or any other change that affects the financial or ownership structure of the Customer, including but not limited to a change in directors, shareholding, management, partners or trustee, any new charge, mortgage, or security given to any supplier or financier of the Customer within 14 Business Days of the change.
- 20.2 On receipt of such notice of change, the Company may elect to either:
- (1) continue with this agreement;
 - (2) terminate this agreement.
- 20.3 If the Company elects to terminate this agreement under this clause, the provisions of clause 9 apply as if there had been a default.

21. Entire Agreement

- 21.1 These Terms and Conditions (which include the part headed "Account Application Form") will constitute the entire agreement of the parties about their subject matter and supersede all previous agreements, understandings and negotiations on that subject matter

22. Severability

- 22.1 If any part of a provision of these Terms and Conditions is unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of these Terms and Conditions will have full force and effect, and the validity or enforceability of the agreement in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of the agreement or is contrary to public policy.

