

AIR CON NELSON LIMITED TERMS & CONDITIONS OF TRADE

1 - DEFINITIONS

- 1.1 "Seller" means AIR CONDITIONING NELSON LIMITED, Trading as AIR CON NELSON LIMITED, and any company which is directly or indirectly a subsidiary of AIR CONDITIONING NELSON LIMITED, Trading as AIR CON NELSON LIMITED and any duly authorised agent.
- 1.2 "Customer" means the person, authorised agent or legal entity described in the application, or stated on the invoice or order form, buying goods and/or services from AIR CONDITIONING NELSON LIMITED, Trading as AIR CON NELSON LIMITED.
- 1.3 "Goods" has the same meaning as section 2 of the Sale of Goods Act 1908 and is any goods provided by the seller to the customer.
- 1.4 "Services" shall mean all services supplied by the seller to the customer and includes any recommendations or advice.
- 1.5 "Price" shall mean the purchase price of the goods and any other costs.

2 - ACCEPTANCE

- 2.1 Any instructions received by the seller from the customer for the supply of goods shall constitute acceptance of the terms and conditions contained herein.
- 2.2 No agent or representative of the seller is permitted to make any such agreements, representations, conditions or warranties not expressly confirmed by the seller in writing.

3 - PRIVACY ACT 1993

- 3.1 The customer permits the seller to collect, use and retain any information concerning the customer, for the purpose of assessing the customer's credit worthiness, to enforce any rights under this contract, or the marketing of any goods & services provided by the seller to any other party.
- 3.2 The customer permits the seller to disclose information obtained to any person for the purposes set out in clause 3.1.

4 - PAYMENT TERMS

- 4.1 Once goods are ordered payment shall be made for goods according to the terms and conditions stated herein whether or not the goods have been delivered and this contract can not be cancelled except where allowed at law.
- 4.2 A Deposit of 30% is required to guarantee they buyers purchase of goods and services detailed in this quotation.
- 4.3 Payment for goods shall be made in full on or before the 20th day of the month following date of invoice, within 7 days of date of invoice or on the receipt of delivery of goods, whichever is the earlier (the due date). A deposit of 30% is required to guarantee the buyer's purchase of the goods and services detailed in this quotation.
- 4.4 Interest at the rate of 2.5% per month above the current overdraft rate, which we have with our principal registered bank or part thereof may be charged on any amount owing after the due date.
- 4.5 Any disbursements, expenses and legal costs incurred by the seller for default in payment shall be paid by the customer, including any debt collection agency fees, court costs, administration expenses or solicitor's fees.
- 4.6 An administration fee of the greater amount of \$25.00 or 10% of the amount overdue will be payable 30 days after due date and the seller reserves the right to terminate future supply.
- 4.7 Payment will be accepted by cash, cheque, electronic banking or by any other method as agreed in writing by the seller.
- 4.8 Payment may be made by instalments if agreed in writing by the seller.

5 - PRICE

- 5.1 Prices unless otherwise stated, do not include goods and services tax, other taxes, levies or tariffs, exchange rate fluctuations, freight or insurance charges, which if applicable, will be an extra charge to the customer.
- 5.2 Price will be specified on the invoice or quotation and will be the current price at time of delivery.
- 5.3 The price shall not include any installation costs unless agreed in writing.

6 - RISK AND DELIVERY

- 6.1 The goods remain at the seller's risk until the delivery to the customer, but when title passes to the customer the goods are at the customer's risk no matter if delivery has been made or not.
- 6.2 Delivery of goods shall be deemed complete when the seller gives possession of the goods for delivery to the customer, or possession of the goods is given to a general carrier, for delivery to the customer.
- 6.3 Where the seller delivers goods to the customer by instalments and the seller fails to deliver one or more instalments, the customer shall not have the right to recant the contract.
- 6.4 The seller shall not be liable to the customer for damage or loss due to failure by the seller to deliver the goods promptly or at all.

7 - TITLE

- 7.1 Title in the goods passes to the customer when the customer has made payment in full for all goods supplied by the seller.
- 7.2 The customer gives necessary authority to the seller to enter any premises occupied by the customer, at any reasonable time, to remove any goods not paid for in full by the customer. The seller shall not be liable for damages, costs or expenses or any other losses suffered by the customer as a result of this action.

8 - LIMITATION OF LIABILITY

- 8.1 The seller shall not be liable for any loss of profits, or any consequential indirect loss, or damage of any kind arising directly or indirectly from any breach of the seller's obligation under this contract or in tort.
- 8.2 Where the seller is liable to the customer, the maximum cost of any liability shall not exceed the value of the goods or services provided by the seller to the customer.

9 - NON WAIVER

- 9.1 Failure by the seller to enforce any of the terms & conditions contained in this contract shall not be deemed to be a waiver of any of the rights the seller has in this contract and is not liable for any indirect loss or expense to the customer.

10 - FORCE MAJEURE

- 10.1 The seller shall not be liable for failure or delay to perform its obligations if the delay or failure is beyond its control.

11 - CONSUMER GUARANTEES ACT 1993

- 11.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires goods or services from the seller for the purposes of a business.
- 11.2 If the customer on sells the goods to a third party, the customer shall indemnify the seller for any losses incurred due to third party claims against the seller.

12 - JURISDICTION

- 12.1 The contract shall in all respects be deemed to be a contract made in New Zealand and the validity, construction and performance of the contract shall be governed by New Zealand law.

13 - RETURN OF GOODS

- 13.1 The customer shall be deemed to have accepted the goods unless the customer notifies the seller otherwise within 24 hours of delivery of the goods to the customer.
- 13.2 If the goods are not accepted according to clause 7.1 of this contract the customer shall pay for the delivery of the returned goods to the seller.
- 13.3 The seller will not accept product returned for credit that is in anyway damaged, or not of merchantable quality, or product that has been specially manufactured or procured for the customer.
- 13.4 The seller, should agreement to accept returns be granted, shall be entitled to charge the customer a re-stocking fee of 10% of the sell price for product returned in good merchantable quality.
- 13.5 At the seller's discretion defective goods will be replaced or refunded by the seller if the customer has notified the seller within 24 hours of delivery.

14 - PERSONAL PROPERTY SECURITIES ACT 1999

- 14.1 The customer agrees that the provisions herein constitute a Security Interest in Personal Property (as those terms are defined in the Personal Property Securities Act 1999 ("PPSA")) in respect of which the seller may register a financing statement on the Personal Property Securities Register.
- 14.2 The customer hereby waives its rights contained in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA.

15 - ASSIGNMENT

- 15.1 The customer shall not assign all or any of its rights or obligations under this contract without the written consent of the seller.

16 - CANCELLATION

- 16.1 The seller may cancel these terms and conditions or cancel delivery of goods and services at any time before the goods are delivered by giving written notice. The seller shall not be liable for any loss or damage arising from such cancellation.
- 16.2 The customer may cancel delivery of goods at the seller's sole discretion and will be liable for any costs incurred by the seller.

17 - WARRANTY

- 17.1 For goods not manufactured by the seller the warranty shall be the current warranty provided by the manufacturer of the goods. The seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturers warranty.
- 17.2 Any fault in workmanship will lead to the customer notifying the seller within 24 hours.
- 17.3 In the case of second hand goods, the seller provides no warranty to the customer as to the quality or suitability for any purpose of such goods.

18 - PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 18.1 If the customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for the seller agreeing to supply goods and credit to the customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to the seller, the payment of any and all monies now or hereafter owed by the customer to the seller and indemnify the seller against non-payment by the customer. Any personal liability of a signatory hereto shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

19 - INTELLECTUAL PROPERTY

- 19.1 The seller shall not be liable in respect of any claim which may be made against the seller for infringement of any letters, patent, registered design or copyright which may arise as a result of the seller supplying goods to the customer in accordance with these terms and conditions, and the customer agrees to indemnify and keep indemnified the seller from and against all or any such claims and against all loss, damage, costs and expenses incurred by or recovered against the seller in respect of any such claim.
- 19.2 Any drawings, specifications and technical data submitted or made available to the customer by the seller shall remain the property of the seller and the customer shall be liable to the seller for any loss, damage, cost or expense incurred by the seller as a result of any unauthorised use or disclosure by the customer of any such drawings, specifications and technical data.

20 - CONSTRUCTION CONTRACTS ACT 2002

- 20.1 This clause constitutes agreement by the seller and the customer on all of the mechanisms referred to in section 14 of the construction contracts act 2002.
- 20.2 As part of any invoice (where applicable) the seller may serve a "payment claim" on the customer as that term is defined in the construction contracts act 2002.
- 20.3 Where the seller submits a payment claim the customer may respond to the payment claim by providing a "payment schedule", as that term is defined in the construction contracts act 2002. The payment schedule must be provided within 20 days of the date of receipt of the payment claim.
- 20.4 If the customer does not respond to a payment claim by providing a payment schedule within 20 days of the date of the invoice then the customer becomes liable to pay the claimed amount in the payment claim. If a payment schedule is provided before the expiry of the said period then the customer becomes liable to pay the scheduled amount in the payment schedule to the seller provided however that this does not in any way restrict or limit the seller's right to refer to dispute resolution under these terms and conditions, or under the construction contracts act 2002, or by any other means available to the seller, any disputed part of the payment claim as set out in the payment schedule.
- 20.5 Unless otherwise agreed, where the seller serves a payment claim, the customer will pay the amount it becomes liable to pay under this clause within 20 days of the date of the payment claim.

21 - MISCELLANEOUS

- 21.1 If anything in this agreement is unenforceable, illegal or void it is severed and the rest of this agreement remains in force.
- 21.2 The customer may not claim any counter claim or set-off against any payments due by it to the seller.
- 21.3 Under no circumstances shall the liability of the seller exceed the price of the goods in the event of a breach of this contract.
- 21.4 The seller may license or sub-contract all or any part of its rights and obligations without the customer's consent.
- 21.5 The seller reserves the right to review and change these terms and conditions at any time and will notify the customer of this in writing at which time the changes will take effect.