

## Terms and Conditions

The following terms and conditions shall apply to each agreement for the sale of Goods and/or the supply of Services. The Buyer agrees to be bound by these terms and conditions upon acceptance of the Quotation(s) from the Seller.

### 1. Interpretations

- a. "Seller" shall mean Alpha Air Pty Ltd (ACN 149 716 209).
- b. "Buyer" shall mean the person or entity named as the Buyer on any Quotation, invoice, purchase order, or any other documentation produced in relation to the supply of Goods and/or Services pursuant to these Terms, or any person acting on behalf of and with the authority of the Buyer.
- c. "Price" shall mean the cost of the Goods or Services as described in the Quotation subject to clause 4 herein.
- d. "Goods" shall mean all Goods to be supplied by the Seller to the Buyer as described in the Quotation.
- e. "Services" shall mean all Services to be supplied by the Seller to the Buyer as described in the Quotation, including any recommendations and advice.
- f. "Quotation(s)" means the document specifying the Goods or Services to be supplied by the Seller to the Buyer including agreed specifications, Price and payment terms.
- g. "Terms" means these terms and conditions as amended from time to time.

### 2. Jurisdiction

These Terms shall be governed by and construed in accordance with the laws of Victoria.

### 3. Offer and Acceptance

- a. On the receipt of any request from the Buyer to the Seller for the supply of Goods/Services however made, the Seller shall provide to the Buyer the Quotation in respect of the requested Goods/Services. Any acceptance, confirmation, authorisation or other instructions received from the Buyer for the Seller to proceed to deliver the Goods/Services described in a Quotation shall constitute acceptance of these Terms.
- b. Where two or more entities constitute the Buyer, all such entities shall be jointly and severally liable for all payments of the Price.
- d. These Terms become binding upon acceptance and may thereafter only be altered or revoked with the written consent of the both parties. The Buyer agrees to provide correct and accurate information on any Quotation and to notify the Seller of any changes to the Buyer's details, including name, address, telephone, email, or any changes in ownership structure of the Buyer by written notice within (10) days of any such changes taking place.
- e. The Seller reserves the right to decline, in whole or in part, any order or request from the Buyer in its absolute discretion.

### 4. Price

- a. The Buyer agrees to pay the Seller the price of the Goods/Services as described in the Quotation or otherwise specified by the Seller prior to acceptance.
- b. The Price specified in any Quotation shall remain valid and binding upon the Seller for a maximum period of six (6) months after the date of acceptance of the Quotation, or while stocks remain available, whichever is the earlier.
- c. Unless otherwise specified in writing all Quotations are supplied on the basis that:
  - i. Existing electricity, gas, and water supplies are adequate to service the Goods supplied;
  - ii. Quotes for new or upgraded services are based on the service running in the most direct route;
  - iii. Characteristics of the building and on site, including but not limited to, clearance, access, load bearing walls and trusses, insulation and window treatments are suitable for the Goods supplied;
  - iv. Costs associated with modification of structure, earthworks, drainage, disposal of waste products, penetration or removal or disposal of hazardous materials are explicitly not addressed or included; and
  - v. There are no foreseeable delays.

- d. The Buyer acknowledges that unforeseeable delays including without limitation building construction delays may result in increased costs for the Buyer which will not be included in the Quotations.
- e. While the Seller agrees to use their best efforts to avoid delays and increased costs resulting from delays, delays may be unavoidable, resulting in additional costs necessarily incurred in excess of the Quotations which shall be payable by the Buyer if reasonably justifiable.
- f. In the event that unforeseen costs are necessarily incurred, or unquoted additional work is required, to complete installation, including but not limited to work associated with the discovery of hazardous or potentially hazardous materials or situations, any additional costs shall be approved by and are the responsibility of the Buyer. If any such additional costs are not approved by the Buyer, the Seller is under no obligation to continue to deliver any outstanding Goods or Services not yet delivered, and shall be entitled to cancel the job releasing them from these Terms.
- g. The Buyer acknowledges that they must pay the Seller for their Services and/or labour up until the point of cancellation.

## **5. Payment Terms**

- a. The Buyer agrees to pay deposit of 50% of the full quoted amount upon acceptance of the Quotation, or such other deposit amount as described in the Quotation or otherwise agreed by the Seller. Any deposit described in the Quotation is payable prior to the delivery of any Goods or Services.
- b. All remaining amounts are immediately due and payable in full upon completion of installation, as defined in clause 12 herein.
- c. If installation is to be carried out over a period of three (3) days or more, the Seller may require payment of progress payments on the dates and in the amounts specified in the Quotation. All progress payments must be paid in full on the nominated date prior to any further work commencing.
- d. For Quotations that relate to the sale of Goods only, and do not include any component relating to installation, payment for all such Goods is due and payable in full on acceptance of the Quotation.
- e. Any deposit paid by the Buyer to Seller on acceptance of the Quotation may be retained by the Seller in whole or in part if the Quotation is cancelled by the Buyer as reimbursement for the costs and expenses incurred by the Seller up to the date of cancellation.
- f. The Seller reserves the right to pass on to the Buyer any additional costs (including merchant fees) incurred where the Buyer pays the Seller by credit card (if applicable).
- g. If the Buyer disputes the Seller's invoice or statement, the Buyer must still pay the entire amount. The Seller will refund any agreed amount following resolution of the dispute.

## **6. Delivery**

- a. The Buyer must ensure that access to the delivery and installation site is made available to the Seller or its representatives on the installation date. The Buyer is solely responsible for making any necessary arrangements to take delivery and/or installation of the Goods, including preparation of the site in the manner advised by the Seller, security arrangements for the Goods, and access to the site where required for the entire period of installation.
- b. The provisions of Clause 18 herein apply irrespective of whether Goods are delivered to a site which is, or is not, attended.
- c. If additional work is required to be performed by the Seller in respect of the Goods or Services, the Buyer shall make all necessary arrangements to ensure that the site remains accessible to the Seller during the period of any such further work.
- d. Delivery of the Goods to any third party nominated by the Buyer (including carriers) is deemed to be delivery to the Buyer.
- e. The Seller will take all reasonable measures to provide the Goods and/or Services on the delivery and installation dates identified in the Quotation. If it becomes necessary for the Seller to reschedule the delivery and/or installation date(s), the Seller will notify the Buyer at the earliest opportunity and arrange an agreed alternative date for delivery and/or instalment of the Goods/Services. The Seller shall not be liable for any loss or damage incurred by the Buyer, or any of the Buyer's agents, customers, related companies, or contractors arising from the change of any delivery or installation date.
- f. If the Buyer requires the delivery or installation date to be re-scheduled, the Buyer must provide as much notice to the Seller as possible and, in any event, not less than 48 hours' notice. If the Buyer is not prepared for the delivery or installation of the Goods or Services on the nominated date, and the delivery or installation date has not been rescheduled pursuant to this clause, the Buyer will be

responsible for any loss, cost or expense incurred by the Seller in rescheduling delivery or installation of the Goods or Services.

#### **7. Zoned Heating and Cooling Systems**

Where zoned heating and cooling is quoted as part of a ducted or multi head system, the Buyer acknowledges that such system does not have capacity to heat and/or cool areas outside of the zoned areas. Zoned areas must be enclosed for heating and/or cooling to achieve rated conditions.

#### **8. Notification of Defects**

- a. The Buyer must inspect the Goods on delivery and after installation and notify the Seller immediately of any alleged defects, or failure to fulfil the Quotation. The Seller will be given access to any Goods or the installation site (as the case requires) within a reasonable time after delivery in order to inspect any alleged defects in the Goods or installation.
- b. The Buyer shall notify the Seller within seven (7) days after delivery of the Goods or completion of installation (as the case requires) of any alleged defects in performance, or failure to comply with the Quotation.
- c. Should the Buyer fail to give such notification, the Goods/Services will be deemed to be in compliance with those ordered, and free from any defects whatsoever.

#### **9. Warranties**

- a. The Seller provides no warranty in respect of the Goods and shall assign the Buyer, in so far as it is able to do so, the benefit of any condition, warranty or guarantee, express or implied, in the Seller's contract with its own supplier.
- b. The Seller hereby warrants that, subject to the conditions of warranty as specified in clause 10 herein, all installations are covered by a sixty (60) month warranty against defects arising from workmanship.
- c. All Goods are supplied with warranty cards and instructions which outline the conditions of warranty. It is the responsibility of the Buyer to notify the Seller if upon installation any such documentation is missing.
- d. The Buyer shall be responsible for completing and returning all warranty documentation to the manufacturer and failure to do so may result in the warranty being void.
- e. Where the Seller has agreed that the Buyer is entitled to claim under warranty, the Seller's liability is limited to (at the Seller's discretion), replacing or repairing the Goods or arranging for a third party to replace or repair the Goods.
- f. The Seller accepts no liability whatsoever for the performance or reliability of any Goods where pre-existing and/or second-hand components have been utilised or installation or repair has been conducted by anyone other than the Seller or the Goods have been removed, moved or altered by anyone other than the Seller. The Buyer accepts full responsibility for any remedial work required (not limited to balancing, adjustment and repairs or replacement) to ensure correct operation.

#### **10. Conditions of Warranty**

- a. Any warranty shall become void in a situation where:
  - i. The Goods have not been properly maintained by the Buyer;
  - ii. The Buyer has any outstanding invoices for monies payable to the Seller;
  - iii. Installation of the Goods has not been carried out by persons recognised by the Seller as being trained and accredited to install the Goods;
  - iv. The Goods continue to be used after any fault or defect would reasonably have become known to the Buyer;
  - v. The defect or fault occurred from reasonable wear and tear;
  - vi. The defect or fault occurred as a result of circumstances beyond the control of either the Buyer or the Seller;
  - vii. Maintenance or alteration is made to the Goods by anyone other than the Seller; or
  - viii. The Seller accepts no responsibility for loss or damage to the Buyer, financial or otherwise, arising from a delay in the time taken for the Seller to replace or repair any Goods covered by the warranty.

#### **11. Buyer's Disclaimer**

- a. Except to the extent required by law, the Seller does not make any representations or warranties as to the Goods or Services, including but not limited to, warranties of merchantability and fitness for a particular purpose, title, noninfringement, security, informational content, system integration or accuracy and the express warranty of quiet enjoyment or as to the accuracy or suitability of information, descriptions, guidelines and images including colour, design and texture, descriptions of any materials or products, services or offers. The Buyer disclaims any right to cancel the contract, or to seek compensation for loss or damages arising from any innocent misrepresentation made to the Buyer by the Seller, or any related corporations of the Seller, and their respective officers, employees, agents and contractors.
- b. The Buyer is required to disclose to the Seller all things which will or may possibly affect or possibly be affected by the installation or operation of the Goods described in the Quotation. These include but are not limited to possible defects and deficiencies in relation to existing water, electricity and gas supplies or connections or fixtures or other associated elements of these things, insulations, window treatments, service access, ventilation, space and support adequate for equipment, aesthetic impact, drainage, compliance with government requirements (including but not limited to noise & heritage compliances), and the performance of existing components.
- c. In any event, at all times the Buyer agrees to be responsible for all costs not specifically included in writing in the Quotation associated with but not limited to, modifications, relocations, replacements, upgrades and repairs of any kind, to or of, anything referred to in 10b or the Goods described in the Quotation and always without any recourse against the Seller whatsoever.

#### **12. Installation**

- a. The Buyer shall be responsible for making all necessary arrangements to ensure installation may be carried out on the specified date.
- b. Should the Buyer fail to comply with clause 12(a) herein, and subject to these Terms, any additional costs associated with the installation shall be the responsibility of the Buyer.
- c. Whilst all due care will be taken, the Seller accepts no responsibility for damages to any of the Buyer's property or impeded performance of any audio, visual, or data equipment as a result of delivery and/or installation, other than the statutory obligations imposed upon it as outlined in clause 24 herein.
- d. Unless specified otherwise in writing or at the Seller's absolute discretion, the Buyer shall be responsible for the disposal of all unwanted surplus equipment, materials and rubbish.
- e. Installation shall be deemed to be complete when all components are fitted.

#### **13. Design Conditions**

- a. Design conditions are based on the Buyer installing appropriate roof and wall insulation, and external blinds on glass, particularly north/west facing.
- b. Equipment is specified based upon rated conditions. Rated test conditions are based on Australian Standards 1861. Condition A: indoor conditions, cooling dry bulb 27 degrees, wet bulb 19 degrees, outdoor dry bulb 35 degrees, 24 degrees wet bulb, heating conditions are based upon 21 degrees dry bulb, outdoor dry bulb 7 degrees, 6 degrees wet bulb.
- c. The Buyer acknowledges that they must notify the Seller (when placing an order) in writing of any specific installation requirements or restrictions (including without limitation, heritage overlays) that may impact on the installation location of goods.

#### **14. Intellectual Property**

- a. The Buyer acknowledges and agrees that any intellectual property rights in respect of the Goods and Services (including, but not limited to, rights to design, copyright, patents or trademarks in respect of all drawings, designs, specifications and other information provided by the Seller in connection with any Quotation, offer, current catalogue, website, price list produced by the Seller) shall remain the sole and exclusive property of the Seller. The Buyer must not infringe or cause to be infringed those intellectual property rights or attempt to modify or reverse engineer the Goods and Services.
- b. The Buyer indemnifies the Seller against any loss, damage, expense, cost or claim incurred or suffered by the Seller as a result of breach of clause 14a., including but not limited to legal costs on a solicitor-client basis.

#### **15. Default**

- a. If the Buyer should:

- i. As an individual, commit an act of bankruptcy; or
- ii. As a company, pass a resolution for winding up or have a summons to wind up issued against it; or
- iii. Become subject to any form of external administration; or
- iv. Enter into an arrangement regarding outstanding payment with any of its creditors; or
- v. Allow any invoice to remain in arrears for a period of over thirty (30) days;

all monies currently owed to the Seller shall become due and payable immediately, and the Seller shall have the right to terminate the supply of any further Goods and or Services to the Buyer.

- b. Should the Buyer fail to pay any invoice when due, the Buyer will be responsible for any additional costs associated with recovery of all outstanding amounts, including but not limited to the costs of a solicitor, and any cost incurred by the Seller to its nominated collection agency.
- c. Interest on overdue accounts may be charged at a rate of 2% per month, or at a rate not exceeding the prevailing bank overdraft rate, whichever is the higher, and continue to accrue on a monthly basis until the Buyer has paid all monies owed to the Seller, and the Buyer shall be liable to pay all such interest.
- d. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

#### **16. Retention of Title**

- a. Ownership, property, and title in all Goods shall remain vested in the Seller until the Buyer has paid all monies owing to the Seller under these Terms.
- b. The Goods shall be kept separate and clearly identifiable as property of the Seller until property in the Goods has passed to the Buyer.
- c. Until such time as property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Bailee for the Seller, and hereby assigns all legal and equitable right and title to the proceeds of sale of the Goods to the Seller.
- d. If, at any time, the Buyer is in default or breach of these Terms, the Seller may request in writing that the Buyer return the Goods or any part of them at any time until property in the Goods has passed to the Buyer.
- e. Should the Buyer fail to return the Goods to the Seller upon such notice the Seller, without prejudice to any of its other rights and remedies under these Terms, reserves the right of entry to the Buyer's premises or any other premises where the Goods may be stored, by its servants or agents for the purpose of recovering or re selling the Goods, and any cost incurred as a result of such action will be the responsibility of the Buyer.

#### **16A. Security**

- a. "PPSA" means the Personal Property Securities Act 2009 (cth) and "PPSR" means the Personal Property Securities Register pursuant to the PPSA. Words and phrases not defined in this clause 16A will have the meaning given to them in the PPSA.
- b. The Buyer acknowledges this to be a security agreement for the purposes of the PPSA.
- c. In order to secure payment by the Buyer for the provision of Services and/or Goods and performance of obligations under these terms, the Buyer acknowledges and agrees that they must, within the timeframe notified by the Seller, sign all documents, and do all things necessary, as notified by the Seller to, or as otherwise required to enable registration with respect to the security interest and for that registration to continue until such time as all of the Buyer's obligations under the security agreement have been satisfied.
- d. The Seller may exercise its rights in relation to the security interest any time after the Buyer fails to comply with its obligations under this security agreement.
- e. To the extent permitted by the PPSA, the Buyer waives its rights to receive any notices, statements or forms required to be issued or which would ordinarily be issued, whether by the Seller or any other person, to the Buyer under the PPSA.
- f. The Buyer will be entitled to a release of the security interest when all its obligations under this security agreement have been satisfied.
- g. The Buyer:
  - i. irrevocably appoints the Seller, as its attorney to sign all documents and do all things the Seller considers reasonably necessary to comply with the Buyer's obligations under this security agreement, where the Buyer has failed to do so within the timeframe required by the Seller or the PPSA; and

- ii. ratifies any acts the attorney lawfully does or causes to be done under the security agreement.

#### **17. Unpaid Sellers' Rights**

If payment has not been received by the Seller when due, and the Seller has made a verbal or written demand for payment, and the Goods are in possession or control of the Seller, the Seller reserves the right to dispose of the Goods and claim from the Buyer any loss arising as a result of such disposal.

#### **18. Risk**

- a. Notwithstanding retention of title as specified in clause 16 hereof, all risk passes to the Buyer upon delivery.
- b. If any of the Goods are stolen, damaged or otherwise rendered less valuable than when they were supplied prior to title in them passing to the Buyer, the Seller is entitled without prejudice to any of its other rights and remedies under any agreement, to any/all possible or actual insurance proceeds payable for the Goods.

#### **19. Cancellation**

- a. If the Buyer is in default or breach of these Terms or if, for any reason, the Goods or Services are unable to be supplied or delivered, the Seller may cancel any Quotation and the delivery of the Goods or Services by giving notice to the Buyer. If the Seller cancels the Quotation because of the default or breach by the Buyer, the Buyer shall be responsible for any costs incurred by the Seller up to the time of cancellation.
- b. The Seller shall not be liable for any loss or damage suffered by the Buyer arising from such cancellation.
- c. At the Seller's sole discretion or as otherwise permitted by these Terms, the Buyer may cancel delivery of Goods or Services.
- d. In the event that the Buyer cancels delivery of Goods or Services and subject to these Terms, the Buyer shall be liable for any costs incurred by the Seller up to the time of cancellation, including but not limited to any re stocking fees incurred by the Seller.

#### **20. Limitation of Liability**

- a. The liability of the Seller to the Buyer for any reason related to the performance of the Goods/Services under these Terms shall be limited to the amount paid or payable by the Buyer to the Seller for such Goods/Services.
- b. The Seller accepts no liability for Goods supplied based on measurements and specifications supplied by the Buyer or any other third party, and the Buyer shall be responsible for any additional costs associated with subsequent alteration of the Goods or installation.

#### **21. Privacy Act 1988**

- a. The Seller shall be entitled to obtain a personal credit report to collect overdue payment on commercial or consumer credit (Section 18K (1)(h) Privacy Act 1988).
- b. The Buyer agrees that Individual Data provided may be used and retained by the Seller for the following purposes and for other purposes as agreed to between the Buyer and Seller or required by law from time to time:
  - i. Provision of Goods/Services
  - ii. Providing instruction to subcontractors.
  - iii. Marketing of Goods/Services by the Seller, its agents, distributors, or contractors.
  - iv. Assessing the credit worthiness of the buyer in relation to extending credit.
  - v. Exchanging of information with a credit reporting agency or trade reference named by the Buyer.
  - vi. Processing of any payment instructions, direct debit facilities and/or credit facilities requested by buyer.
  - vii. Collection of amounts outstanding in the Buyer's account by the Seller's nominated Collection agent or solicitor.

#### **22. Approvals**

The Buyer is responsible, at the Buyer's own cost, for arranging all licences, permits, government and or landlords consents, and approvals which may be required for the performance of any works under any agreement.

### **23. The Commonwealth Trade Practices Act and Fair Trading Acts**

The warranties, conditions, rights and remedies of the Buyer as outlined in the relevant Commonwealth Trade Practices Act and the State Fair Trading Act are not intended to be compromised as a result of anything contained in these terms and conditions, except to the degree permitted by those Acts.

### **24. Force Majeure**

The Seller will not be liable for any failure to perform, or delay in performance of, any obligation where such failure or delay is due to anything beyond the Seller's reasonable control including, but not limited to, adverse weather or terrain, strikes, government orders, lockouts and other industrial action, material shortages, failure of any of the Seller's suppliers to supply, accidents, power or data transmission failure, breakdowns of plant or machinery, war, changes of government, import or export regulations or embargoes.

### **25. General**

- a. The Seller assumes no responsibility for changes in the laws of Victoria, or the Commonwealth of Australia which may affect the supply of Goods/Services.
- b. The Seller may sub-contract part or all of its obligations under these Terms without the Buyer's consent.
- c. The Seller reserves the right to review and amend these Terms at any time. Any changes to these Terms will apply to all new instructions, orders and Quotations provided by the Seller to the Buyer after the date of amendment.
- d. If any Terms or Conditions contained in this document are found to be not legal or unenforceable for reasons of invalidity or any other reason, the remaining provisions shall stand and not be affected in any way whatsoever.