

GENERAL TERMS AND CONDITIONS OF TRADE (08/12)

To the fullest extent legally permissible all dealings between the customer (including all related and/or associated companies and/or other entities, all successors and/or assigns and in its own capacity and as trustee of each and every trust of which it is trustee) [jointly "the Customer"] and Airefrig Australia Pty Ltd ACN 008 761 573 (and/or any related and/or associated companies, trusts and/or other entities and/or any successors and/or assigns) whether trading as "Airefrig Australia" and/or otherwise ["Airefrig"] relating to any goods and/or services [the "goods" and/or the "services"] are subject to the following terms and conditions ["these Terms"] unless otherwise expressly agreed in writing:

1. Payment: a) Payment shall be made by cash, cheque, bank cheque or EFTPOS, without deduction and within thirty (30) days from the end of the month of purchase, or unless otherwise agreed in writing. b) The Customer agrees to pay an administration fee of 2.5% (or as otherwise nominated by Airefrig) as the liquidated processing cost on credit card payments and/or on payments made outside the credit period stipulated in each invoice or statement. c) Airefrig may off-set any amounts it owes the Customer against any amounts the Customer owes it.

2. Interest: Interest shall be charged on overdue accounts at 1.25% per month.

3. Property: a) The Customer agrees that these Terms constitute a "security agreement" for the purposes of the *Personal Property Securities Act 2009* (Cth) ["PPSA"], that Airefrig has and/or will have a "security interest" in respect of all goods and/or services whether present or after acquired for the purposes of the PPSA and that PPSA Sections 125, 130, 132(3)(d), 132(4), 135 & 157 shall not apply to any such security interest b) Property in goods shall not pass until payment in full of all monies owed by the Customer. c) Airefrig reserves the right to take possession and dispose of goods as it sees fit at any time until full payment. The Customer grants permission to Airefrig to enter any property where any goods are stored with force if necessary. d) Immediately on delivery the Customer accepts liability for the safe custody of goods and indemnifies Airefrig for any related losses. e) On sale or disposition of any goods prior to full payment the Customer agrees to deposit all proceeds in a separate bank account and to not mix proceeds with any other monies and shall forthwith account to Airefrig notwithstanding that Airefrig may have granted any credit facility and/or time to pay. f) Until payment in full the Customer agrees: (i) to keep all goods unpaid for as fiduciary for Airefrig and store all goods in a manner which shows Airefrig as owner; (ii) to only sell goods in the usual course of its business on the basis that all proceeds are held in trust for Airefrig; and (iii) that sale on terms, for less than cost and/or to a related entity of the Customer shall not be "in the usual course". g) Without derogating from any rights of Airefrig as a creditor or under these Terms if goods are used in any construction, fabrication, manufacturing and/or other process ["the Process"] which results in an entitlement of the Customer to receive money from any other person the Customer agrees to hold such part of any monies received by the Customer (or the corresponding book debt owed to the Customer in respect of those monies) as is equivalent to the value of any goods used in the Process as invoiced to the Customer by Airefrig UPON TRUST for Airefrig until payment in full for those goods and all monies owed to Airefrig. h) Nothing in this clause is intended to create a charge and this clause shall be read down to the extent necessary to avoid creating any charge. i) The Customer agrees a certificate signed by an officer of Airefrig and stating certain facts for the purposes of this clause shall be conclusive evidence of each fact stated. j) Airefrig is not obliged to accept the return of goods.

4. Consumer Guarantees & ACL: The Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) ["ACL"] provides consumers with certain consumer guarantees and rights in relation to certain transactions concerning goods and/or services (see www.consumerlaw.gov.au). Any rights the Customer may have under the ACL shall apply notwithstanding any inconsistent provisions in these Terms which shall be read down to the extent necessary to comply with the ACL and which shall otherwise apply to the fullest extent legally permissible.

5. Warranty: a) All goods are sold subject to any applicable manufacturer's warranty, for a period of 12 months; b) Airefrig may satisfy any valid warranty claim by replacing or repairing the goods at its election; c) any warranty shall run from the date of original purchase and not be extended by any replacement or repair; d) the failure of a product during a warranty period does not automatically constitute a warranty claim; e) Airefrig Australia Pty Ltd will not be liable for incorrect application or poor work practices installing and commissioning the product; f) consequential damages, labour and loss of refrigerant are not covered by warranty; and g) all claims will be assessed by Airefrig Australia Pty Ltd or the manufacturer.

6. Limitation of Liability: To the extent permitted by the ACL: a) the Customer agrees to limit any claim to the replacement/repair of the goods (or cost thereof) and/or re-supply of services (or cost thereof); b) Airefrig shall not be liable for: (i) any claim, loss or expense which is made after 30 days from the date of delivery of goods and/or services – after which there shall be deemed to have been unqualified acceptance; (ii) any consequential loss and/or any special and/or punitive damages through any fault of Airefrig or otherwise; and/or (iii) any claim in any way caused and/or contributed to by the Customer and/or any third party.

7. Cancellations and Returns: The Customer agrees: a) not to cancel any order without Airefrig's prior approval; b) not to return goods without Airefrig's prior approval, if goods are not in brand new and unused condition with undamaged packaging and/or if 3 weeks or more have passed since delivery; c) that Airefrig may take back goods in saleable condition on such terms as Airefrig considers to be reasonable; d) to pay Airefrig on request a restocking fee of 15% of the gross invoice value of all returns; e) not to return goods without first providing Airefrig an original invoice as proof of purchase; and f) not to return any goods which have been custom made, custom processed or custom acquired.

8. Quotations: The Customer agrees that: a) quotations must be in writing; b) Airefrig shall not be bound by any quotation if an order is not placed within 30 days from the date of quotation; c) Airefrig may prior to receipt of any order amend any quotation and notify the Customer accordingly without ramification; d) Airefrig shall not be bound by any quotation if it forms the view that the subject matter of the quotation is to form part of a larger transaction or series of transactions with the Customer and if Airefrig also forms the view that those circumstances have substantially and/or materially changed; e) the Customer shall pay any additional charges Airefrig levies for holding any goods referred to in any quotation pending placement of an order.

9. Placement of Orders: The Customer agrees that: a) if any dispute arises concerning any order (including any question of identity, authority or any phone, fax or computer generated order) the internal records of Airefrig shall be conclusive evidence of what was ordered; b) each order placed shall be and be deemed to be a representation by the Customer made at the time that it is solvent and able to pay all of its debts as and when they fall due; c) when placing any order the Customer shall inform Airefrig of any facts which might reasonably affect acceptance of the order by Airefrig and/or any grant of credit and any failure to do so by or on behalf of the Customer shall be deemed to create an inequality of bargaining position, be deemed to constitute the taking of an unfair advantage of Airefrig and to be unconscionable, misleading and deceptive.

10. Supply and Delivery: a) Airefrig may supply by installments and/or withhold or cancel supply without ramification where: (i) Airefrig has insufficient goods to fulfill orders; (ii) goods are not available to supply; (iii) the Customer is in breach of these Terms; (iv) Airefrig has any safety concerns; and/or (v) Airefrig considers it appropriate whether because of any minimum invoice policy or otherwise. b) The Customer agrees that: (i) Airefrig may elect to arrange delivery at its discretion and without any liability and at the cost and responsibility of the Customer in all things; (ii) the Customer shall be deemed to have accepted delivery and liability for goods on being notified by Airefrig that goods are ready for collection and/or on goods being delivered to a carrier or to the Customer's business premises or nominated site whether attended or not; (iii) a certificate purporting to be signed by an officer of Airefrig confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket; and (iv) Airefrig shall not be liable for delay, failure or inability to deliver any goods. c) The

Customer agrees: (i) to pay for so much of any forward order as Airefrig invoices from time to time; (ii) that no delay or failure to fulfill any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment; (iii) to pay Airefrig for any demurrage or other costs and expenses in handling and/or holding any goods once ready for delivery and/or collection; and (iv) Airefrig may supply an excess or deficiency of goods up to 5% of the volume or weight of the amount ordered and the Customer shall pay for the amount so supplied and shall not make any claim against Airefrig for the amount over or under supplied.

11. Purchase Price: a) In the absence of a binding quotation all sales are made at the price nominated by Airefrig at the time of delivery. b) All government imposts, levies and duties (including any GST or equivalent) shall be to the Customer's account. c) Prices exclude government imposts, levies and duties (including any GST or equivalent).

12. Variations: To be binding any variation or cancellation of these Terms or any order must be approved by Airefrig in writing.

13. Exclusions: To the extent permitted by the ACL: a) no dealing between Airefrig and the Customer shall be or be deemed to be a sale by sample; b) The Customer shall rely on its own knowledge and expertise in selecting any goods and/or services for any purpose and any advice and/or assistance given by or for Airefrig shall be at the Customer's risk and shall not be or be deemed to be given as expert or adviser nor to have been relied on by the Customer or anyone claiming through the Customer; c) all goods are sold subject to all applicable trading terms, warranties and representations of the manufacturer; d) Airefrig shall not be responsible nor liable for paying and/or obtaining any necessary judicial, statutory, government and/or utility fees, expenses, orders, approvals, permits and/or licences; e) Airefrig shall not be liable for any goods and/or services: (i) made or performed to designs, drawings, specifications and/or procedures etc. and/or with materials which are provided and/or approved (whether fully or in part) by or on behalf of the Customer; (ii) utilised, stored, handled and/or maintained incorrectly or inappropriately; and/or (iii) manufactured and/or supplied by any other party; f) the Customer agrees to: (i) check all goods for compliance with all applicable laws, standards and/or guidelines before use, on-sale and/or application; (ii) comply with all applicable laws, standards and/or guidelines and with all recommendations and/or directions made and/or given by Airefrig and/or by any manufacturer; and (iii) act in accordance with good practice at all times.

14. Default: a) On default or breach of any part of these Terms by the Customer the full balance of all unpaid monies shall be deemed by this clause to be immediately due and payable (save to the extent that Airefrig expressly directs otherwise in writing) and Airefrig may *inter alia* terminate any contract, retain all monies paid, cease further deliveries and/or provision of services, recover all lost profits and/or at its discretion take immediate possession of any goods not paid for without prejudice to any other rights and without being liable in any way to any party. b) The Customer agrees not to commence or continue or permit to be commenced or continued through it any suit or Airefrig against Airefrig while the Customer is in default under any part of these Terms or in any of its dealings with Airefrig. c) The Customer agrees to indemnify Airefrig for all fees and expenses payable to solicitors, mercantile agents and other parties acting on behalf of Airefrig in respect of anything instituted or being considered against the Customer whether for debt, possession of any goods or otherwise (including all legal costs on an indemnity basis). d) Airefrig may apply any payment in reduction of fees, interest and/or any principal debt in such order of priority as Airefrig in its discretion deems appropriate. e) The Customer irrevocably authorises the payment directly to Airefrig of any debt due to the Customer by any debtor of the Customer in reduction of any amount due to Airefrig under these Terms or otherwise.

15. Indemnity: The Customer fully indemnifies Airefrig against any claim or loss arising from or related in any way to any dealing between Airefrig and the Customer and/or arising under these Terms.

16. Intellectual Property: The Customer agrees that all intellectual property in the creation of any goods and/or services shall be and remain the property of Airefrig notwithstanding any contribution by the Customer.

17. Other Terms and Conditions: No terms and conditions sought to be imposed by the Customer upon Airefrig shall apply.

18. Reconditioned Goods: Airefrig shall not be liable for any reconditioning and/or repair of products made and/or supplied by the Customer and/or by any third party.

19. Customer Restructure: The Customer shall notify Airefrig in writing of any change in its structure or management including any change in director, shareholder and/or management and/or any change in partnership and/or trusteeship within 7 days of each change. Until such notice is received the Customer guarantees the performance of all obligations passing to any third party and fully indemnifies Airefrig against all loss (including legal costs on an indemnity basis).

20. Jurisdiction: The Customer agrees that these Terms and any claim or dispute between Airefrig and the Customer shall be governed by the law applicable in the State nominated by Airefrig and the Customer agrees to submit to the jurisdiction of the appropriate Court nominated by Airefrig in the capital city of that State. If no State is nominated then Western Australia shall be deemed to be the nominated State.

21. Credit Limit: Any credit facility or credit limit is an indication only of the intention of Airefrig at the time. Airefrig may vary or withdraw credit at any time at its discretion and without any liability to the Customer or any other party. Upon breach of any of these Terms, the whole of the monies owing by the Customer shall become immediately due and payable.

22. Waiver: An election by Airefrig not to exercise any of its rights on any breach of these Terms shall not constitute a waiver of any rights relating to any other breach.

23. Notice: The Customer agrees that it shall be deemed to have notice of any change to these Terms immediately any change is adopted by Airefrig and whether or not the Customer has actual notice.

24. Security For Payment: The Customer hereby grants to Airefrig a general lien over all property of the Customer until payment in full of all monies owing to Airefrig.

25. Force Majeure: Airefrig shall not be in default or in breach of any contract with the Customer as a result of *Force Majeure* including any strike or lock-out.

26. Insolvency: The Customer shall be in default of these Terms if it commits an act of insolvency, appoints an insolvency practitioner and/or calls a formal meeting of creditors.

27. Cylinders: The Customer agrees: a) all gas cylinders remain the property of Airefrig unless sold (subject to clause 3 above) to the Customer, in which case all liability, responsibility and regulatory requirements lay solely with the Customer; b) on request to return cylinders to Airefrig; c) to comply with all regulatory requirements in use and ownership of the cylinders; and d) to indemnify Airefrig for the full replacement cost of any cylinders not returned or damaged and against any liability arising from misuse or non-compliance with any regulations.

28. Severability: Any part of these Terms shall be capable of severance without affecting any other part of these Terms.