

Custom Air Conditioning Pty Ltd – Terms & Conditions of Trade

1. Definitions			
1.1 "Custom Air Conditioning" means Custom Air Conditioning Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Custom Air Conditioning Pty Ltd.	2.5	Client requests the unit to not be located adjacent to the external wall, ceiling or roof and piping requires.	11.5 The Client waives their rights to receive notices under sections 95, 116, 117(1)(a), 132(1)(a) and 132(1)(b) of the PPSA.
1.2 "Client" means the person buying the Goods as specified in any invoice, document or order, and there is more than one Client is a reference to each Client jointly and severally.	2.6	The final location of the wall, window or floor unit must be determined on site by the Client.	11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
1.3 "Goods" means all Goods or Services supplied by Custom Air Conditioning to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).	2.7	Custom Air Conditioning shall upon installation ensure that all installed Goods meet current industry standards applicable to noise levels. However, Custom Air Conditioning does not warrant that noise levels will remain constant post installation as the Goods may be impacted by many factors such as the weather, lack of maintenance, tampering etc.	11.7 Unless otherwise agreed to in writing by Custom Air Conditioning, the Client waives their right to receive a verification statement in accordance with clause 11.3 to 11.5.
1.4 "Price" means the Price payable for the Goods as agreed between Custom Air Conditioning and the Client in accordance with clause 5 below.	2.8	In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.	11.8 The Client must unconditionally ratify any actions taken by Custom Air Conditioning under clauses 11.3 to 11.5.
2. Acceptance	2.9	The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.	11.9 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.
2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.	2.10	In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify Custom Air Conditioning immediately upon any proposed changes. The Client agrees to indemnify Custom Air Conditioning against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 5.	12. Security and Charge
2.2 These terms and conditions may only be amended with Custom Air Conditioning's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Custom Air Conditioning.	2.11	All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations 2002. All of the cabling work will comply with the Australian and New Zealand Wiring Standards.	12.1 The Client agrees to give Custom Air Conditioning agreeing to supply the Goods to the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
2.3 Where any service under warranty conditions are to be carried out, these shall be done during normal working hours, being Monday to Friday. The Client shall provide Custom Air Conditioning with access to the equipment and electrical meter box to carry out such servicing.	2.12	The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If, for any reason including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing), Custom Air Conditioning reasonably forms the opinion that the Client's premises is not safe for the installation of Goods to proceed then Custom Air Conditioning shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 6.2 above) until Custom Air Conditioning is satisfied that it is safe for the installation to proceed.	12.2 The Client indemnifies Custom Air Conditioning from and against all Custom Air Conditioning's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Custom Air Conditioning's rights under this clause.
2.4 Custom Air Conditioning reserves the right to charge an initial consultation fee for drawings and/or designs prepared on request for the Client for use in the performance of the Services, or, acceptance of the quotation the initial fee shall be waived from the overall Price for the Services. In the event that the Client does not accept the quotation, the Client accepts and agrees to pay Custom Air Conditioning the initial fee detailed in the quotation for Services provided to date.	2.13	The Client accepts and acknowledges that the Goods offered are per the manufacturer's specifications and any unauthorised alterations by the Client to the Goods may void the manufacturer's warranties. Any cost associated with rectifying or re-setting any Goods to the manufacturer's specifications shall be borne by the Client.	12.3 The Client agrees to indemnify Custom Air Conditioning and each director of Custom Air Conditioning as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.
3. Change in Control	2.14	Where a need arises for an air balance on the air conditioning system, contact should be made by the Client within twelve (12) weeks from the installation of Custom Air Conditioning shall carry this out with no charge to the Client. However, should this requirement be outside the stated period, then the Client shall be responsible for all associated costs.	13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)
3.1 The Client shall give Custom Air Conditioning not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Custom Air Conditioning as a result of the Client's failure to comply with this clause.	2.15	Custom Air Conditioning has made no provision for any patching or painting or boxing in of any exposed ductwork unless specifically quoted for.	13.1 The Client may inspect the Goods on delivery and must within seven (7) days of delivery notify Custom Air Conditioning in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after such defect becomes evident. Upon such notification the Client must allow Custom Air Conditioning to inspect the Goods.
4. Electronic Transactions Act 2000	2.16	Access	13.2 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 (the "Non-Excluded Guarantees").
4.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.	2.17	The Client shall ensure that Custom Air Conditioning has clear and free access to the work site at all times to enable them to undertake the works. Custom Air Conditioning shall not be liable for any loss or damage to the site (including, without limitation, damage to pavements, driveways and concrete or paved areas) unless due to the negligence of Custom Air Conditioning.	13.3 Custom Air Conditioning acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
5. Price and Payment	2.18	Underground Locations	13.4 Except as expressly set out in these terms and conditions or in the Non-Excluded Guarantees, Custom Air Conditioning makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Custom Air Conditioning's liability in respect of these warranties is limited to the fullest extent permitted by law.
5.1 At Custom Air Conditioning's sole discretion the Price shall be either:	2.19	Prior to Custom Air Conditioning commencing any work the Client must advise Custom Air Conditioning of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.	13.5 Custom Air Conditioning's liability is limited to the extent permitted by section 64A of Schedule 2.
(a) as indicated on any invoice provided by Custom Air Conditioning to the Client;	2.20	Whist Custom Air Conditioning will take all care to avoid damage to any services, driveways and concrete or paved areas, Custom Air Conditioning in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.	13.6 If Custom Air Conditioning is required to replace the Goods under this clause or the CCA, but is unable to do so, Custom Air Conditioning may refund any money the Client has paid for the Goods.
(b) Custom Air Conditioning's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.	2.21	Title	13.7 If the Client is not a consumer within the meaning of the CCA, Custom Air Conditioning's liability for any defect or damage in the Goods is:
(c) Custom Air Conditioning reserves the right to change the Price: (a) if a variation to the Goods which are to be supplied is requested; or (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or (c) where additional Services are required due to the discovery of hidden or identifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design, any alterations or additional power to the meter box, hidden pipes and wiring in walls, etc) which are only discovered on commencement of the Services; or (d) in the event of increases to Custom Air Conditioning in the cost of labour or materials which are beyond Custom Air Conditioning's control.	2.22	Custom Air Conditioning and the Client agree that ownership of the Goods shall not pass until:	(a) limited to the value of any express warranty or warranty card provided to the Client by Custom Air Conditioning at Custom Air Conditioning's sole discretion;
5.2 Custom Air Conditioning's sole discretion a non-refundable deposit of up to ten percent (10%) may be required.	2.23	(a) the Client has paid Custom Air Conditioning all amounts owing to Custom Air Conditioning; and	(b) limited to any warranty to which Custom Air Conditioning is entitled, if Custom Air Conditioning did not manufacture the Goods;
5.3 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, Custom Air Conditioning reserves the right to treat all retentions as placing the Client's account into default.	2.24	(b) the Client has met all of its other obligations to Custom Air Conditioning.	(c) otherwise negated absolutely.
5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Custom Air Conditioning, which may be:	2.25	Receipt by Custom Air Conditioning of any form of payment other than cash shall not be deemed to be payment until that form of payment has been received, cleared or recognised.	13.8 Subject to this clause 13, returns will only be accepted provided that:
(a) on delivery of the Goods;	2.26	It is further agreed that:	(a) the Client has complied with the provisions of clause 13.1; and
(b) before delivery of the Goods;	2.27	until ownership of the Goods passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Goods and must return the Goods to Custom Air Conditioning on request;	(b) Custom Air Conditioning has agreed that the Goods are defective; and
(c) after installation of the Goods; or	2.28	(a) the Client holds the proceeds of any insurance in respect of the Goods on trust for Custom Air Conditioning and must pay to Custom Air Conditioning the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.	(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
(d) the date specified on any invoice or other form as being the date for payment; or	2.29	(b) the Client must not sell, dispose, or otherwise part with possession of the Goods other than the Client gives any interest in the market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Custom Air Conditioning and must pay or deliver the proceeds to Custom Air Conditioning on demand.	(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Custom Air Conditioning.	2.30	(c) the Client should not convert or process the Goods or intermix them with other goods but the Client holds the resulting product on trust for the benefit of Custom Air Conditioning and must sell, dispose of or return the resulting product to Custom Air Conditioning as its sole agent.	13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, Custom Air Conditioning shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, accredited credit card being Visa or MasterCard only (plus a surcharge of up to one and a half percent (1.5%) of the Price), or by any other method as agreed to between the Client and Custom Air Conditioning.	2.31	(d) the Client irrevocably authorises Custom Air Conditioning to enter any premises where Custom Air Conditioning believes the Goods are kept and recover possession of the Goods.	(a) the Client failing to properly maintain or store any Goods;
5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Custom Air Conditioning an amount equal to any GST Custom Air Conditioning must pay for any supply by Custom Air Conditioning under this or any other agreement for the sale of the Goods. The Client must pay GST without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client 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.	2.32	Custom Air Conditioning may recover possession of any Goods in transit whether or not delivery has occurred.	(b) the Client using the Goods for any purpose other than that for which they were designed;
5.7 Subject to clause 6.2, Custom Air Conditioning's responsibility to ensure that the Services start as soon as it is reasonably possible.	2.33	The Client shall not charge or grant an encumbrance over the Goods or any part of the Goods or any interest in the Goods while they remain the property of Custom Air Conditioning.	(c) the Client continuing the use of any Goods after any defect become apparent or should have become apparent to a reasonably prudent operator or user;
6.2 The Services commencement date will be put back and/or the completion date extended by whatever time an reasonable time that Custom Air Conditioning claims an extension of time (by giving the Client written notice) which completion is delayed by an event beyond Custom Air Conditioning's control, including but not limited to any failure by the Client to:	2.34	Custom Air Conditioning may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.	(d) the Client failing to follow any instructions or guidelines provided by Custom Air Conditioning;
(a) make a selection; or	2.35	Personal Property Securities Act 2009 ("PPSA")	(e) fair wear and tear, accident, or act of God.
(b) have the site ready for the Services; or	2.36	Upon assenting to these terms and conditions in writing the Client 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 is supplied in the future by Custom Air Conditioning to the Client.	13.10 Custom Air Conditioning may in its absolute discretion accept non-defective Goods for return in which case Custom Air Conditioning may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
(c) notify Custom Air Conditioning that the site is ready.	2.37	The Client undertakes to:	13.11 Notwithstanding anything contained in this clause Custom Air Conditioning is required by law to accept a return if Custom Air Conditioning will only accept a return on the conditions imposed by that law.
6.3 Delivery ("Delivery") of the Goods is taken to occur at the time that the Client or the Client's nominated carrier takes possession of the Goods at Custom Air Conditioning's address; or	2.38	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 Custom Air Conditioning may reasonably require to:	14. Intellectual Property
(b) Custom Air Conditioning (or Custom Air Conditioning's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.	2.39	(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;	14.1 Where Custom Air Conditioning has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Custom Air Conditioning.
6.4 At Custom Air Conditioning's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.	2.40	(ii) register a security interest required to be registered by the PPSA; or	14.2 The Client warrants that all designs, specifications or instructions given to Custom Air Conditioning will not cause Custom Air Conditioning to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Custom Air Conditioning against any action taken by a third party against Custom Air Conditioning in respect of any such infringement.
6.5 The Client must take delivery in receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Custom Air Conditioning shall be entitled to charge a reasonable fee for redelivery and/or storage.	2.41	(iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);	14.3 The Client agrees that Custom Air Conditioning may (at no cost) use for the purposes of marketing or entry into any competition, any design or drawings created by or for the Client so long as Custom Air Conditioning has created for the Client.
6.6 Custom Air Conditioning may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with these terms and conditions.	2.42	Indemnity, and upon demand reimburse, Custom Air Conditioning 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;	15. Default and Consequences of Default
6.7 Any time or date given by Custom Air Conditioning to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Custom Air Conditioning will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.	2.43	not register a financing change statement in respect of a security interest without the prior written consent of Custom Air Conditioning;	15.1 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 Custom Air Conditioning's sole discretion such interest shall compound monthly at the Client's election) after any such judgment.
7. Risk	2.44	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 Custom Air Conditioning;	15.2 If the Client owes Custom Air Conditioning any money the Client shall indemnify Custom Air Conditioning from and against all costs and disbursements incurred by Custom Air Conditioning in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Custom Air Conditioning's contract default fees, and bank dishonour fees).
7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.	2.45	Immediately advise Custom Air Conditioning 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.	15.3 Without prejudice to any other remedies Custom Air Conditioning may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions, Custom Air Conditioning may, at its option, terminate the supply of Goods to the Client. Custom Air Conditioning will not be liable to the Client for any loss or damage the Client suffers because Custom Air Conditioning has exercised its rights under this clause.
7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Custom Air Conditioning is entitled to receive the insurance proceeds payable for the Goods. The production of these terms and conditions by Custom Air Conditioning is sufficient evidence of Custom Air Conditioning's rights to receive the insurance proceeds without the need for any person dealing with Custom Air Conditioning to make further enquiries.	2.46	Custom Air Conditioning and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.	15.4 If the Client is in breach of any obligation (including those relating to payment) under these terms and conditions, Custom Air Conditioning may, at its option, terminate the supply of Goods to the Client. Custom Air Conditioning will not be liable to the Client for any loss or damage the Client suffers because Custom Air Conditioning has exercised its rights under this clause.
7.3 If the Client requests Custom Air Conditioning to leave Goods outside Custom Air Conditioning's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.	2.47		15.5 The Client waives the Client's right to receive any money under these terms and conditions.
7.4 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation as per clause 5.2, if the	2.48		15.6 Custom Air Conditioning 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 Client. On giving notice, Custom Air Conditioning shall repay to the Client any money paid by the Client for the Goods. Custom Air Conditioning shall not be liable for any loss or damage whatsoever arising from such cancellation.