

TERMS OF SUPPLY

Definitions

MAE means MAE Refrigeration Pty Ltd ABN 67 639 561 578

Buyer means the person with whom MAE have entered into a contract for the supply of any Goods and/or Services.

Goods includes, but is not limited to, heating, ventilation, refrigeration, electrical and/or air conditioning equipment and all other goods or other property which are supplied by MAE to the Buyer.

Services includes, but is not limited to, commissioning, installation, service, maintenance, and/or repair work supplied by MAE to the Buyer.

GST has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under the Act.

1. Quotations and Orders

- 1.1. Quotations are valid for a period of thirty (30) days from date of issue by MAE or otherwise specified in the quotation. Prices given in any quotation by MAE are applicable to that quotation only and will not apply in any other instance.
- 1.2. These Terms of Sale apply to the Buyer and to MAE in respect of Goods and/or Services provided to the Buyer. Any terms and conditions set out in the Buyer's order deviating from or inconsistent with these Terms of Supply will not bind MAE notwithstanding any statement by the Buyer in its order that its terms and conditions shall prevail over these Terms of Supply.
- 1.3. A contract shall only be or be deemed to have been entered into between MAE and the Buyer for the supply of Goods and/or Services when the Buyer's order has been accepted by MAE in writing.

2. Modifications

- 2.1. If MAE is asked to carry out additions or modifications to the Goods and/or perform additional Services or more frequent Services than those set out in the MAE quotation, these will be deemed a variation if agreed to by MAE and MAE will be entitled to charge an appropriate amount for any additional Goods supplied and/or Services provided. Any variation will take into consideration the nature and extent of such additions or modifications and the cost MAE incurs in performing these, but (subject to this) all other conditions of the quotation and these Terms of Supply will continue to apply.

3. Auxiliary Components

- 3.1. When auxiliary components are included in the quotation and not expressly named, MAE reserves the right to supply from the sources considered the most suitable. If, after quotation, components of a particular make are requested by the Buyer, the price will be adjusted by the difference between the cost to MAE of those components and that allowed by MAE in the quotation. The date of delivery will be adjusted by the period of delay, if any, in availability of such components.

4. Terms of Payment

- 4.1. Property and ownership in the Goods will not pass to the Buyer but will remain in MAE until payment in full of the purchase price of the Goods and Services and all other amounts owing to MAE by the Buyer. The Goods are to be clearly identified by the Buyer as remaining the property of MAE until they are paid for in full.
- 4.2. The Buyer may sell or deal in the ordinary course of business with the Goods and with the interest of MAE in the Goods and may for the purpose of such sale or dealing part with possession thereof but the proceeds of any sale or dealing will be held by the Buyer on trust for MAE. The Buyer hereby agrees to accept this appointment as bailee and fiduciary.
- 4.3. Notwithstanding the above, MAE reserves the following rights in relation to the Goods until all amounts owed by the Buyer to MAE are fully paid:
 - (a) Legal and equitable ownership of the Goods;
 - (b) To enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
 - (c) To keep or resell any of the Goods repossessed pursuant to (b) above.
- 4.4. The Buyer must so long as MAE is entitled to the property in the Goods, store the Goods so that they are clearly identifiable as the property of MAE.
- 4.5. In the event that the Goods are resold, or goods manufactured using the Goods are sold, by the Buyer, the Buyer holds on trust such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in manufacture of the Goods sold in a separate and identifiable account as the beneficial property of MAE and must pay such amount to MAE

on request. Notwithstanding the provisions above, MAE is entitled to maintain an action against the Buyer for the purchase price of the Goods and/or Services.

- 4.6. Where the Buyer incorporates the Goods with any other product before property has passed to the Buyer, the new product shall be separately stored or marked in a manner which makes such new product readily identifiable as the Goods of MAE.
- 4.7. If payment for the Goods is not made by the Buyer by the due date specified by MAE to the Buyer then the Buyer shall return the Goods to MAE upon demand. If the Buyer does not return the Goods to MAE within 48 hours of receipt of the demand, MAE shall be entitled to enter upon the Buyer's premises at any time to do all things necessary to recover the Goods. The Buyer shall be liable for any costs associated with the exercise by MAE of its rights under this clause, which shall be repayable upon demand.
- 4.8. If payment is not received by the due date, interest may be charged at 4% above the Reserve Bank of Australia cash target rate.
- 4.9. The Buyer shall be liable for all costs of whatsoever nature of and associated with the exercise of MAE's rights under this clause, which costs shall be payable on demand.
- 4.10. Should the Buyer sell the Goods to any sub-purchaser, the Buyer must obtain a specific acknowledgement from the sub-purchaser that property and ownership in the Goods will not pass to the sub-purchaser but will remain with MAE until payment in full of the purchase price of the Goods by the sub-purchaser to the Buyer.
- 4.11. Risk in the Goods passed to the Buyer at the time of delivery and the Buyer shall keep the Goods insured.

5. Buyer Delayed Delivery

- 5.1. Should the Buyer delay delivery of the Goods, MAE reserves the right to store the Goods and to obtain payment as though the Goods had been delivered and to recover storage, insurance, and handling costs, incurred due to the delay. MAE shall be entitled to make progress claims when components and/or Services are required ahead of schedule delivery dates or when payment in full for the Goods and/or Services will be delayed.

6. Default of the Buyer

- 6.1. Should the Buyer fail to make due payment for any Goods supplied by MAE or commit a breach of any term of the sale, or being a natural person commit an act of bankruptcy, or being a corporation by act or omission enables the appointment of an administrator, scheme manager, trustee, official manager, receiver, receiver and manager, liquidator, or any other person authorised to enter into possession or assume control of the property of the Buyer pursuant to a mortgage or other security, MAE may, without prejudice to any other rights it may have, do any or all of the following:
 - (a) Withdraw any credit facilities which may have been extended to the Buyer and require immediate payment of all monies owing or accrued;
 - (b) Withhold any further deliveries of Goods or performance of Services required under an accepted order;
 - (c) In respect of Goods already delivered, enter into the Buyer's premises to recover and resell same for its own benefit;
 - (d) Suspend and/or terminate performance of any other contracts which MAE have with the Buyer.
- 6.2. A certificate signed by the Director or other authorised person of MAE, stating the sum due and payable by the Buyer under the contract at the date mentioned in that certificate, will be prima facie evidence that the sum so stated is the sum due and payable by the Buyer to MAE under the contract at the date. Without limiting clause 4.9, the cost of collection of any monies due and payable, including by not exclusively the fees of any mercantile agent or solicitor engaged by MAE will be recoverable on a full indemnity basis against the Buyer.

7. Cancellation Fees

- 7.1. Orders may not be altered or cancelled without the written consent of MAE. If MAE agrees to alter or cancel the order, the Buyer shall indemnify MAE against any loss, damage and expense incurred by MAE in relation to the cancellation or alteration of that order including the cost of return freight, return shipping to factory or origin, items purchased from third parties for inclusion in Goods and all labour and engineering costs incurred by MAE in the execution or part execution of the Goods and/or Services including compensation payable to any supplier of MAE and loss of profit.

8. Delivery

- 8.1. All quoted delivery or consignment dates are estimates only. MAE is not obliged to meet such dates and will not be liable to the Buyer by reason of delays caused by any reason whatsoever.

9. Inspection During Maintenance

- 9.1. If requested, the Buyer will be allowed access to MAE's relevant facility for the purpose of inspecting the Goods and Services being carried out under the terms of the order. Such inspection must be by prior arrangement with MAE.

10. Product Change

10.1. MAE reserve the right to make reasonable modification in Goods of any kind without notice and to deliver revised designs or models of Goods against any order, unless the right is specifically waived by MAE in writing. Prior to making modifications of a major nature which may affect the Buyer in its contractual responsibilities, such modifications will be referred to the Buyer for acceptance.

11. Noise and Vibration

11.1. Notwithstanding anything to the contrary contained within these Terms of Supply, MAE will not accept any responsibility for noise and/or vibration including without limitation any information given by MAE regarding noise and/or vibration unless such information is specifically requested by the Buyer and provided by MAE in writing as part of the contract.

12. Access for Services and Ownership of Goods

12.1. It is the Buyer's responsibility to provide adequate access for entry and installation of Goods and/or Services covered by the contract, together with adequate access and rigging facilities for future services. The Buyer will maintain the area in which the Goods are (or are to be) located free of extraneous materials and move any contents, fixtures, fittings, or moveable partitions as required to facilitate the performance of Services by MAE.

12.2. The Buyer will grant MAE entry to the premises and access to the Goods at any time when required for the performance of the Services and allow MAE to make use of all existing building services and maintenance facilities at the premises in the performance of the Services, and to remove any item from the premises (if in MAE's opinion necessary) for the purpose of undertaking any repair or replacement thereof. The Buyer will only permit persons duly qualified to undertake service and repair work on the Goods other than in connection with its normal daily operation.

12.3. The Buyer warrants to MAE that the Buyer of the Services is the beneficial owner of the Goods or has obtained from the beneficial owner consent for MAE to carry out such Services and will indemnify and hold harmless MAE in respect of any claim made against MAE based on, or in any way arising from, a lack of such consent. Unless otherwise stated, it is the Buyer's responsibility to obtain and provide access, services, facilities, permits, approvals, or licences, as may be required for the performance of the Services.

13. Assembly

13.1. When it is necessary to dispatch the Goods in other than fully assembled condition (which facts shall be stated in the quotation), assembly and erection will be the Buyer's responsibility and at the Buyer's cost except where nominated in writing in the quotation.

14. Progress Claims

14.1. MAE reserve the right to issue partial payment invoices as materials are supplied and certain Services are completed and will issue a final invoice on delivery of the Goods and/or completion of the Services under the contract (less progress claims). Such progress claims will show material made available and/or Services provided. Payment is to be made by the Buyer in accordance with the terms of these Terms of Supply.

15. Price Variation (Taxes, Freight and Insurance)

15.1. GST or Import Duty (if any) or any other taxes or duties included in the quotation are based on the rate applicable on all the items as at the date of the quotation. All variations, whether they be due to amendments of the relevant Acts or changes in interpretations of classifications, will be payable by the Buyer and will be added to the quoted price.

15.2. Variations to rates of exchange, freight, insurance, primage and cartage on imported equipment or components, affecting the amount paid by MAE for the actual Goods or components supplied will also be payable by the Buyer and will be added to the quoted price.

16. Goods and Services Tax

16.1. Any quotation issued by MAE does not include an amount on account of GST, unless otherwise specifically stated. If any supply made is subject to GST, the Buyer must pay to MAE an additional amount equal to the GST payable.

16.2. The Buyer must pay the GST amount at the same time as the Buyer must pay the contract price, or if partial payment invoices are issued, at the same time as the Buyer must make the partial payment.

17. Warranty

17.1. MAE warrants the Goods to be free of defect in workmanship and/or materials under normal use and service and will repair or replace at its option, any part of components which upon MAE's inspection prove to have such defects, within a period of one (1) year of date of installation or 18 months from date of shipment whichever occurs first. Freight for such items will be at the cost of the Buyer to the nearest MAE's repair facility. Any replacement part is covered by warranty for the

unexpired portion of the warranty period covering the original goods for a period of ninety (90) days, whichever is the greater. Labour costs for removal and replacement of faulty components and diagnosis of faults is specifically excluded.

- 17.2. Where the Goods are manufactured by a third party or the Goods include products manufactured by a third party, any warranty which may be given by MAE only applies to the extent MAE receives the benefit of that third party manufacturer's warranty, except otherwise agreed in writing by MAE.

18. Guarantee and Indemnity

- 18.1. In consideration of MAE, at the request of the Guarantor, entering into these Terms of Supply with the Buyer, the Guarantor covenants and agrees with MAE that:

- (a) Notwithstanding that as between the Guarantor and the Buyer the Guarantor may be a surety only, as between the Guarantor and MAE the Guarantor is a principal debtor;
- (b) The guarantor will be liable jointly and severally with the Buyer (and with each other Guarantor if there is more than one Guarantor) for the due and punctual payment of all moneys to be paid by the Buyer under these Terms of Supply and for the due performance and observance by the Buyer of these terms and such liability will not be reduced or affected by the death, insolvency, liquidation or dissolution of the Buyer or the Guarantor or any of them;
- (c) The Guarantor indemnifies MAE from and against all losses, damages, costs (including costs payable by MAE to a solicitor) and expenses which MAE may suffer or incur in consequence of any breach or non-observance of these Terms of Supply by the Buyer and the Guarantor agrees that the Guarantor will remain liable to MAE under this indemnity notwithstanding as a consequence of any breach or non-observance MAE has exercised any of its rights under these Terms of Supply.
- (d) On any default or failure by the Buyer to observe and perform any of these Terms of Supply the Guarantor will immediately (without the need for any demand to be made) pay all moneys and make good to MAE all losses, damages, costs (including all costs payable by MAE to a solicitor) and expenses sustained or incurred by MAE by reason of or in consequence of any breach or non-observance of these Terms of Supply by the Buyer.
- (e) The liability of the Guarantor under this guarantee and indemnity will not be affected by the granting of time or any other indulgence to the Buyer or by any compromise, abandonment, waiver, variation or by any other thing which under the law relating to sureties would or might but for this provision release the Guarantor in whole or in part from its obligations under this guarantee and indemnity.
- (f) To the fullest extent permitted by law the Guarantor hereby waives such of its rights as surety or indemnifier (legal, equitable, statutory or otherwise) as may at any time be inconsistent with any of the provisions of this guarantee and indemnity.
- (g) The enforceability of this guarantee and indemnity against the Guarantor is not conditional, contingent or dependent in any way upon the validity or enforceability of this guarantee and indemnity against any other person or execution of these Terms of Supply or this guarantee and indemnity by any other person.
- (h) The Guarantor does not execute this guarantee and indemnity as a result of or by reason of any promise, representation, statement, information, or inducement of any nature or kind given or offered to the Guarantor by MAE or on MAE's behalf whether in answer to any enquiry by or on behalf of the Guarantor or not and Mae was not prior to the execution of this guarantee and indemnity by the Guarantor, and is not subsequently, under any duty to disclose to the Guarantor or to do or execute any act, matter or thing relating to the affairs of the Buyer or its transactions with MAE.

- 18.2. The Guarantor agrees that its liability to MAE is unlimited.

19. Severance

- 19.1. In the event of the invalidity of any part or provision of these Terms of Supply, that invalidity will not affect the validity or the enforceability of any other part or provision of these Terms of Supply. If any part or provision of these Terms of Supply is void or unenforceable, it must be severed from these Terms of Supply and the parts and provisions that are not void or unenforceable are unaffected by the severance.