

# Terms of Sale

## 1. INCORPORATION

- 1.1 These Terms apply to the supply of all goods and/or services by us to you from the date that you accept these Terms.
- 1.2 You accept these Terms when: you submit an order; you accept delivery of the goods and/or services pursuant to an order; or you make a payment for any goods and/or services supplied, whichever occurs first.

## 2. BROCHURES AND QUOTES

- 2.1 Our brochures and catalogues are published for general information only and do not constitute a binding contractual arrangement.
- 2.2 You may request a quote from us for the potential supply of goods and/or services. Any quote given by us is a mere invitation to treat and does not constitute a contractual offer. We may vary or withdraw a quote at any time. All quotes will lapse 30 days after issue.

## 3. ORDERS

- 3.1 An order for goods or services is not binding until accepted by us in writing. We reserve the right to accept orders in whole or in part.
- 3.2 We will not be bound by any conditions added in the order or modifications to these Terms unless agreed by us in writing.
- 3.3 Once we have accepted an order you may not alter or modify it without our prior written consent.
- 3.4 While every effort shall be made to fulfill your order for goods, we shall not be liable for any loss or damage arising through non-availability of stock.

## 4. PRICE AND PAYMENT

- 4.1 Prices provided in our published price lists or by our representatives are subject to change without notice and are not binding on us.
- 4.2 All prices expressed are exclusive of any applicable freight charges, GST and duties, which will be added to the amount to be paid by you.
- 4.3 Unless otherwise agreed in writing, we will issue you an invoice upon delivery of the goods and/or services specified in your order accepted by us.
- 4.4 All payments must be paid within 30 days of the date of either the invoice or shipment, whichever occurs first.
- 4.5 If you are overdue with any payment, we reserve the right to require you to pay for all goods and services before they are supplied. We also reserve the right to impose a default interest on any overdue amounts at a rate of 1.5% of the value of the invoice per month.

## 5. DELIVERY + RISK

- 5.1 Risk in the goods will pass to you upon the goods being placed aboard the vessel or vehicle which is to deliver the goods to you. You shall be responsible for arranging delivery and insurance of the goods. We shall not be liable to you in the event of any failure by you to arrange insurance.
- 5.2 While we shall use reasonable endeavours to meet agreed delivery dates, we shall not be liable to you for any loss or damage whatsoever should we be delayed or prevented from delivering the goods or services.
- 5.3 We reserve the right to deliver in instalments. All such instalments, when separately invoiced, are severable as to each instalment.
- 5.4 You may not vary the delivery date without our prior written consent. Goods stored by us due to delivery postponed by you shall be stored at your risk and we reserve the right to impose a weekly storage

charge of 1% of the relevant invoice value. If delivery is postponed for more than three months, we may at our discretion adjust any fixed confirmed price to our current list price.

5.5 You shall inspect all goods supplied upon delivery. We shall not be liable for shortages or other errors in delivery unless you submit a written claim to us within a reasonable time of the delivery of the relevant goods.

5.6 After delivery of the goods, until the full payment has been made you shall possess the goods as bailee only.

## 6. CANCELLATION + RETURNS

- 6.1 The provisions of this clause are subject to clause 8 and your rights under the ACL.
- 6.2 You may return goods supplied for a credit against subsequent orders within 7 days of delivery provided the following conditions are satisfied:
- 6.2.1 we give our prior written approval;
- 6.2.2 you provide the relevant invoice number and quote date; and
- 6.2.3 the goods returned are in their original condition.
- 6.3 You shall bear the cost of returning the relevant goods to us. You also agree to pay us a handling fee of 15% of the amount paid for the goods. In the case of specifically custom engineered goods, you agree to pay us a handling fee of 100% of the amount paid for the goods.
- 6.4 If contractual performance is delayed or prevented for any reason, we may cancel any delivery of goods and services without prejudice to our right to recover payment from you for goods and services previously supplied.
- 6.5 If you request to cancel an order you agree to pay us cancellation fee of 15% of the invoice amount of that order. If the order regards specifically custom engineered goods, you agree to pay us a handling fee of 100% of the amount of that order.

## 7. EXCLUSIONS AND LIMITATIONS

- 7.1 The exclusions and limitations in this clause 7 are subject to clause 8 (*Statutory Rights*).
- 7.2 All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms, that are not contained in it, are excluded to the fullest extent permitted by law.
- 7.3 Any liability arising in relation to goods and/or services that we supply to you, however arising including any liability arising by virtue of any representation or warranty, whether express or implied, is hereby excluded to the fullest extent permitted by law.
- 7.4 Our warranty does not cover labour, equipment rental or freight charges incurred as a result of executing the warranty.
- 7.5 No warranty is given and we will not be liable for:
- 7.5.1 alterations to goods or interference with our Services for which we are not responsible;
- 7.5.2 damage or failure caused by unusual or non-recommended use or application of the goods or our services; or
- 7.5.3 loss caused by any factors beyond our control;
- 7.6 We will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by you or any other person

resulting from any act or omission by us (including breach, termination or non-observance of the terms of an Order or agreement which incorporates these Terms).

- 7.7 Our total liability for breach of these Terms or breach of our contractual obligations or duties at law or in equity (however arising) is limited at our option to:
- 7.7.1 the replacement or supply of equivalent goods or services;
- 7.7.2 the repair or rectification of the goods or services;
- 7.7.3 the payment of the cost of replacing or acquiring equivalent goods or services; or
- 7.7.4 the payment of the cost of the repair or rectification of the goods or services.
- 7.8 If we obtain goods or services from a third party in order to carry out your instructions or complete an order, we will not be liable for any breach of these Terms if that breach is a result or is connected with the supply by a third party of such goods or services. Any claim by you in relation to the supply of such goods or services must be made directly against that third party.

## 8. STATUTORY RIGHTS

- 8.1 In circumstances where you are acquiring goods or services from us as a 'consumer' for the purposes of (and as defined in section 3 of Schedule 2 of) the ACL, we acknowledge and agree that certain statutory guarantees and rights shall apply to you as provided by relevant laws but subject to these Terms as applicable and where permitted by relevant laws.
- 8.2 Nothing in these Terms excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the ACL and corresponding provisions and relevant laws of State or Territory legislation containing implied terms and/or statutory guarantees which operate to protect the purchasers of goods and services in various circumstances.

## 9. SECURITY INTEREST

- 9.1 This clause 9 sets out the Security Agreement between you (**Grantor**) and us (**Secured Party**).
- 9.2 The Grantor grants to the Secured Party a Security Interest in the goods supplied by us to you (**Collateral**), including all related proceeds, as security for all or part of the payment of any amount relating to the goods in accordance with these Terms or otherwise. For the avoidance of doubt, this Security Interest is also a Purchase Money Security Interest (**PMSI**) in the Collateral.
- 9.3 Subject to the priority rules set out in the PPSA, this Security Interest ranks in priority ahead of all other security interests in the Collateral.
- 9.4 This Security Interest is a continuing security and the Grantor's obligations under this Security Agreement continue until it has been terminated in accordance with this Security Agreement.
- 9.5 The Security Interest attaches to the Collateral by virtue of the Grantor's possession of the goods as bailee under clause 5.6.
- 9.6 The Grantor irrevocably gives authority to the Secured Party to register a financing statement with respect to the Security Interest on the PPSR. Despite this provision, the Secured Party may also perfect this Security Interest by possession of the relevant goods.
- 9.7 The Grantor shall provide the Secured Party with any information required for the Secured Party to register a financing statement or a financing change

statement with respect to this Security Interest on the PPSR.

9.8 Until this Security Interest in the Collateral has been extinguished, the Grantor will ensure that, as far as is reasonably practicable:

9.8.1 any identifying plate, mark or packaging number on any of the Collateral (including goods) is not removed, defaced or obliterated; and

9.8.2 the Collateral is identifiable and distinguishable from any other goods or products that may be in your possession and as to each particular invoice of goods comprising the Collateral.

9.9 The Grantor acknowledges that this Security Interest continues to apply to Collateral that becomes an accession to other goods.

9.10 Until this Security Interest in the Collateral has been extinguished, if:

9.10.1 a Default Event occurs in respect of the Grantor; or

9.10.2 the Grantor is in breach of these Terms, the Secured Party may as it sees fit and without notice to the Grantor, seize, retain or redeem the Collateral, or seek any and all remedies provided under Chapter 4 of the PPSA or any other remedies provided at law or in equity, including those set out in clause 9.11.

9.11 In addition to any rights given to the Secured Party under Chapter 4 of the PPSA, the Grantor irrevocably:

9.11.1 grants the Secured Party the right to:

A demand the immediate return of the Goods to the Secured Party;

B enter the Grantor's premises to search for and seize the Goods without notice or liability to the Grantor; and

C retain, sell or otherwise dispose of those Goods in any manner it sees fit;

9.11.2 indemnifies, and keeps indemnified, the Secured Party against any claim (including in negligence) in respect of any damage to the property of, or the premises occupied by, the Grantor or any consequential loss caused by another party arising relating to searching for and seizing any goods in accordance with this clause.

9.12 The Grantor may only deal with any of the Collateral (including accessions) in respect of which full Payment has not been received if:

9.12.1 the Secured Party has not exercised a remedy under clause 9.10;

9.12.2 the proposed transaction is a bona fide transaction to a third party at market value conducted in the ordinary course of business;

9.12.3 the proposed transaction does not create a security interest in the Collateral in favour of another party;

9.12.4 all proceeds of the proposed transaction is:

A immediately paid to the Secured Party; or

B held on trust for the Secured Party in a separate account, payable to the Secured Party on demand; and

9.12.5 the Grantor does not disclose to a third party that the goods are subject to this Security Agreement or that the proceeds will be immediately paid to the Secured Party or held on trust for the Secured Party.

9.13 The Grantor shall pay all costs incurred by the Secured Party (including costs on a solicitor-client basis

and debt collector's costs) arising out of this Security Agreement, including costs in relation to:

9.13.1 registration of a financing statement or a financing change statement;

9.13.2 seizure, retention, redemption or any other remedy exercised pursuant to clause 9.10; and

9.13.3 the enforcement of its rights under this Security Agreement (including matters incidental to it).

9.14 The Security Interest is extinguished only if:

9.14.1 one of the following applies:

A all amounts payable in relation to the Collateral have been paid in full;

B the Collateral has been dealt with by the Grantor pursuant to clause 9.12; or

C a third party has taken free of this Security Interest as provided by the PPSA;

9.14.2 all obligations under this Security Agreement have been satisfied by the Grantor, including the obligation to pay costs as set out in clause 9.13; and

9.14.3 the Secured Party has lodged a financing change statement to remove this Security Interest from the PPSR.

9.15 Notice requirements under sections 95, 118, 121(4), 130, 132 and 135 of the PPSA shall not apply and not place any obligations on the Secured Party in favour of the Grantor.

9.16 The Grantor agrees to waive its right to receive from the Secured Party a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to these Terms and this Security Agreement.

9.17 The Grantor shall immediately notify the Secured Party in writing of any change of name of the Grantor.

9.18 The Grantor acknowledge receipt of a copy or due notice of these Terms and this Security Agreement.

## 10. GST

10.1 You must pay to us all GST in addition to any other amounts payable by you to us.

10.2 We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.

10.3 If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax invoice.

## 11. GENERAL

11.1 You agree to indemnify and keep us indemnified in respect of all damages, losses, costs and expenses (including legal costs) that we may incur as a result of your breach or alleged breach of these Terms.

11.2 We may vary these Terms or adopt new Terms from time to time by providing you written notice, which will apply to the supply of goods and services after you accept such new Terms.

11.3 If a Default Event occurs:

11.3.1 we may, without limiting any other right we have under these Terms, terminate any outstanding order and any contract for the supply of goods and services to you; and

11.3.2 all Payments and any other money under these Terms becomes immediately payable.

11.4 Our employees are not authorised to bind us unless express written notice to that effect is given by an authorised person.

11.5 The invalidity or enforceability of any provision of these Terms shall not affect the validity or enforceability of the remaining provisions.

11.6 Our failure to enforce, at any time or for any period of time any terms of the contract incorporating these Terms shall not constitute a waiver of such term and shall in no way affect our right later to enforce it.

11.7 If a Force Majeure Event occurs, we may totally or partially suspend any order or deliveries for any period that we are affected by such an event and elect to extend the period for performance of an obligation under these Terms.

11.8 These Terms bind the parties and their respective successors and assigns.

11.9 These Terms shall be governed by the laws of the state of Queensland and the parties shall submit to the jurisdiction of the courts of the state of Queensland.

## 12. DICTIONARY + INTERPRETATION

12.1 **Personal pronouns:** Except where the context otherwise provides or requires:

12.1.1 the terms we, us or our refers to the Company; and

12.1.2 the terms you or your refers to the Buyer.

12.2 **Dictionary:** In this document, unless otherwise provided, the following terms shall have their meaning as specified:

**ACL** means the Australian Consumer Law under the *Competition and Consumer Act 2010* (Cth) as amended.

**Buyer** means the person or entity with whom we enter into a contract for the sale of goods and/or the supply of services and agrees to be bound by these Terms.

**Company** means ecoHVAC Pty Ltd (ABN 93 009 873 705).

**Default Event** means any one of the following events:

(a) you fail to make any payment when due, whether for the goods and services or otherwise;

(b) Winding Up commences against you;

(c) a receiver is appointed to you;

(d) you become insolvent, bankrupt or commit an act of bankruptcy;

(e) proceedings are commenced or an application is made for the appointment of any persons listed in items (b) to (d) above; or

(f) a mortgagee or their agent enters into possession of your assets.

**Force Majeure Event** means circumstances beyond our reasonable control shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, or loss or damage to Goods in transit.

**GST** means a goods and services tax, or a similar value added tax, levied or imposed by the GST Law.

**GST Law** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**PPSA** means the *Personal Property Securities Act 2009* (Cth) as amended, including any regulations made pursuant to it.

**PPSR** means the Personal Property Securities Register.

**Winding Up** means commencing to be wound up, or suffering a provisional liquidator, liquidator, official manager or any other administrator of the affairs of insolvent companies to be appointed.