

**1 CONTRACT FORMATION**

- (a) Quotations by temperzone limited (the "Seller") to the Buyer constitute invitations to treat and are made upon the conditions contained herein. Such quotations may be either oral or written. If written, quotations will be either per the Seller's Quotation form or per the Seller's current price lists. The term "Buyer" means the person buying the Goods from the Seller. All references to "Goods" in any contract between the Buyer and the Seller means air-conditioning, refrigeration, ventilation and air distribution equipment, and includes all spare parts and accessories for such equipment.
- (b) The Buyer may offer to purchase the goods and/or services ("the Goods") specified in the quotation or price list by placing an order for those Goods.
- (c) No binding contract exists between the Buyer and the Seller until the Seller accepts the Buyer's order by supplying the Buyer with a written order acknowledgement or an invoice.

**2 APPLICATION OF GENERAL CONDITIONS**

- (a) The following general conditions of sale shall apply to any contract concluded in terms of clause 1(c) provided that where there is a conflict between these general conditions of sale and any special conditions tendered by the Seller and/or other specific provisions of the quotation, order acknowledgement or invoice ("Special Conditions") the Special Conditions shall prevail.
- (b) These general conditions of sale and the Special Conditions constitute a complete and exclusive statement of the agreements and understandings between the Seller and Buyer with respect to the contract created by the Seller's acceptance of the Buyer's order notwithstanding any conditions to a contrary effect which may be expressed or implied in any of the documents tendered by the Buyer in connection with the contract and also supersedes all prior arrangements, written or oral.

**3 PRICE**

Any adverse variation in exchange rates, or increases in current ruling costs of labour, transport, freight, insurance, duty, imposts, cost of materials and all other additional costs and expenses incurred or arising between the date of the quotation or the order (as the case may be) and the date of delivery shall be to the Buyer's account and, the price of the Goods shall be increased accordingly.

**4 PAYMENT**

- (a) The price of the Goods together with Goods and Services Tax thereon shall be paid to the Seller without any deduction whatsoever in the case of a cash sale at the time of the transaction and in other cases no later than 30 days from the date of invoice.
- (b) Interest at 2% per month may at the discretion of the Seller be charged on overdue payments.
- (c) Any expenses, disbursements and legal costs incurred by the Seller in the enforcement of any rights contained in this contract shall be paid by the Buyer, including any reasonable solicitor's fees or debt collection agency fees.
- (d) Should the Buyer fail to tender due and punctual payment of the price the Seller may in addition to and without prejudice to any other rights and remedies it may have either cancel the contract by notice in writing or suspend or cancel work (including delivery) on other orders outstanding without prejudice to its rights to receive payment for the work already carried out on those orders and to recover the sum unpaid on any previous orders.

**5 DELIVERY OF GOODS**

- (a) Delivery Times  
Times for delivery of Goods referred to in the quotation or acknowledgement of order are estimates only and the Seller will not accept any liability for delays in delivery whether caused by factors beyond the Seller's control or otherwise.
- (b) Delivery within New Zealand  
Delivery of Goods will be in accordance with the Seller's Freight Policy current at the time of delivery. A copy of the Seller's present Freight Policy is available for inspection at the Seller's offices. The Seller reserves the right to vary such Freight Policy from time to time without notice.
- (c) Delivery of Export Goods  
Delivery of Goods for export will be in accordance with Special Conditions set out in the quotation or acknowledgment of order.

**6 RISK**

Notwithstanding that the property in the Goods may not have passed to the Buyer the Goods shall be at the Buyer's risk in all respects from the time the Goods leave the Seller's premises.

**7 RESERVATION OF PROPERTY IN GOODS**

- (a) Notwithstanding the fact that the Buyer has been given possession of the Goods, until the whole of the price of the Goods has been paid to the Seller the property in the Goods will remain vested in the Seller and the Buyer shall be bailee only in respect of such Goods.
- (b) If prior to acquiring the property in the Goods the Buyer shall intermingle such Goods with any other goods or if such Goods shall become a constituent part of, any other goods the property in the Goods shall nevertheless remain vested in the Seller until the whole of the price of the Goods has been paid to the Seller.
- (c) In cases where a period of credit has been granted to the Buyer by the Seller the Seller may if it considers at any time (whether on reasonable ground or not) that the Buyer is insolvent or likely to become insolvent give notice to the Buyer terminating the period of credit and the price of the Goods shall thereupon become due and payable to the Seller.
- (d) In cases where a period of credit has been granted to the Buyer by the Seller that period of credit shall expire on the earliest to happen of the following events:
  - (i) on the expiration of the agreed period of credit;
  - (ii) on the happening of any of the following events: if the Buyer passes a resolution for winding up or a Court of competent jurisdiction makes a winding up order in respect of the Buyer or the Buyer is placed in receivership or under statutory management or if the Buyer (being a natural person) becomes bankrupt;
  - (iii) on the giving of the notice by the Seller pursuant to clause 7(c).
- (e) If upon expiration of the period of credit in respect of the Goods the price of the Goods has not been paid to the Seller the Buyer's right to possession of the Goods will cease and the Seller may by itself or its agents or servants enter upon any land premises or property where it believes the Goods may be and retake possession of such Goods and remove them from such land, premises or property and the Buyer shall indemnify the Seller in respect of all such actions.

**8 PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**

- (a) As security for payment of the purchase money due by the Buyer to the Seller under each contract for the sale and purchase of Goods, the Buyer, for value received, grants the Seller a security interest in the Goods.
- (b) The Seller has the right to allocate purchase moneys paid by the Buyer to the Seller for Goods against any invoice that is outstanding for the supply of Goods or to allocate any payment between several outstanding invoices.
- (c) The Buyer waives the Buyer's right to receive a verification statement under the PPSA.

**9 PERMITS LICENCES AND APPROVALS**

Unless otherwise stated in the quotation the Buyer shall obtain any permits, licences or approval that may be necessary or required in connection with the Goods and any costs in connection with or caused by the obtaining of such permits, licences or approvals shall be to the Buyer's account.

**10 PERFORMANCE**

Any performance figures given by the Seller in relation to the Goods are given in good faith based on the Seller's experience and are such as the Seller would expect to be obtained in test conditions subject to the recognised tolerances and rejection limits applicable to such figures. Subject to the provisions of the Consumer Guarantees Act 1993, the Buyer alone is responsible for ensuring that the capacity and performance of the Goods are sufficient and suitable for the Buyer's purposes.

**11 DIMENSIONS AND OTHER DESCRIPTIVE DETAILS**

Descriptive details including photographs, illustrations, drawings, weights, dimensions and other particulars given in or accompanying the quotation are subject to alteration without notice.

**12 WARRANTY**

- (a) The Seller having made provision in its price for the Goods to provide for its obligations under this clause warrants to the Buyer that those portions of the Goods which are manufactured by the Seller are free from defects in materials and workmanship under normal use and service for a period of one year from the date of invoice provided that the Seller's obligation as aforesaid shall be limited to rectifying such defects if the Goods concerned or defective parts thereof are returned to its premises by the Buyer and at the Buyer's expense. The Seller's obligation does not include the reimbursement of labour costs involved in rectifying defects unless the Seller has pre-approved both the rectification work undertaken and the estimated cost of that work. In cases where defects occur in items of the Goods which are not manufactured by the Seller the Buyer will only be entitled to such benefits as the Seller may be entitled to from the manufacturer of such items. All other warranties or guarantees, other than those provided to consumers under the Consumer Guarantees Act 1993, in respect of the Goods or any portion thereof whether implied by law, custom, trade or otherwise are hereby expressly excluded. If the Buyer applies parts to or makes modifications to the Goods and these applications or modifications have not been pre-approved by the Seller, the Warranty shall be null and void.
- (b) Warranty on Split System Air Conditioning Units is only applicable provided the units are installed and commissioned by a temperzone Approved Installer and the Warranty Registration card has been signed and returned accordingly. Warranty on Packaged Air Conditioning Units is only applicable provided all servicing is by a temperzone Approved Installer.

**13 EXCLUSION OF LIABILITY**

Except as expressly provided in clause 12 the Seller will not be liable for any loss (including consequential loss), damage or injury arising directly or indirectly from any defect in the Goods, from any breach by the Seller of any of the terms hereof or howsoever otherwise and whether caused to the Buyer or any other person or corporate body and the Buyer shall indemnify the Seller accordingly.

**14 PATENTS, TRADE MARKS, ETC.**

Where the Seller has followed any design or instructions given to it by the Buyer, the Buyer shall indemnify the Seller against all damages, penalties, cost and expenses which the Seller may incur or to which the Seller may become liable through any work required to be done in accordance with those instruction or designs which may involve any infringement or alleged infringement of any patent, trade mark, copyright, design or common law rights. The Buyer warrants that any design or instructions given by it to the Seller shall not be such that will cause the Seller in the supply and/or manufacture of the Goods to infringe any patent, trade mark, copyright, design or common law rights and the Buyer shall indemnify the Seller accordingly.

**15 NON PERFORMANCE**

The Seller will not be responsible for any failure to fulfil its obligations hereunder if and to the extent that such fulfillment is delayed, hindered or prevented by any circumstances beyond its reasonable control.

**16 DELAY BY BUYER**

Without prejudice to any other rights or remedies the Seller may have if the Buyer refuses or neglects to accept delivery of the Goods or any parts thereof after they are available for delivery the Seller may charge the Buyer all additional costs thereby incurred including storage charges, insurance costs and the like.

**17 RETURNS, CANCELLATIONS AND TERMINATION**

- (a) Custom made equipment will not be accepted on return. The return of Goods supplied ex stock may be accepted provided the returned Goods are received by the Seller within 14 days of the date of sale and provided the returned Goods are in the same condition as received. A 10% fee will be charged by the Seller for all returned Goods accepted back for credit.
- (b) In the event that the Buyer purports to terminate and/or repudiate or cancel the contract then and without prejudice to its other rights and remedies the Seller may recover from the Buyer all costs and expenses incurred by the Seller in its performance of the contract.
- (c) Should the Buyer pass a resolution for winding up or if a Court of competent jurisdiction makes a winding up order in respect of the Buyer or if the Buyer is placed in receivership or under statutory management or if the Buyer (being a natural person) becomes bankrupt the Seller may in addition to any other remedies available to it, terminate the contract by notice in writing to the Buyer and in such event without prejudice to its other rights and remedies the Seller may recover from the Buyer all costs and expenses incurred by the Seller in its performance of the contract.

**18 ARBITRATION**

If any dispute or difference arises concerning the construction of any term herein or any accompanying document or in regard to any of the respective rights and obligations of the parties or in any way having any relation to the subject of the contract between the parties or any claim arising therefrom or in relation thereto the same shall be submitted to arbitration in accordance with the Arbitration Act 1908 and any statutory re-enactment or modification thereof.

**19 JURISDICTION**

The contract shall in all respects be deemed to be a contract made in New Zealand and its construction validity and performance shall be governed by New Zealand law.