

## **1. Definitions**

1.1 "Polar" means '(ABN 49 131 594 637) - 'Air-conditioning Specialists Pty Ltd' trading as 'Polar Industries Electrical & Air-Conditioning' and or 'Polar Refrigeration & Air-conditioning' (Polar)' by its successors assigns or any person acting on behalf of: 'Polar' and with the authority.

1.2 "Customer" means the person/s buying the 'Goods' or 'Services' as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.

1.3 "Goods" means all 'Goods', 'Air-conditioning' and/or 'Services', supplied by Polar to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods', 'Air-conditioning' or 'Services', shall be interchangeable for each other).

1.4 "Price" means the Price payable for the 'Goods' or 'Services' as agreed between Polar and the Customer in accordance with clause 4.

## **2. Acceptance**

2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions when the Customer places an order for or accepts delivery of the Goods.

2.2 These terms and conditions may only be amended with Polar consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Polar.

## **3. Change in Control**

3.1 The Customer shall give Polar not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Polar as a result of the Customer's failure to comply with this clause.

## **4. Price and Payment**

4.1 At Polar sole discretion the Price shall be either:

a) Polar 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.

4.2 Polar reserves the right to change the Price if a variation to Polar's quotation is requested. Payment for all variations must be made in full at their time of completion.

4.3 At Polar sole discretion a non-refundable deposit may be required.

4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Polar, which may be:

a) the date which is thirty (30) days following the date of any invoice given to the Customer by Polar.

4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and Polar.

4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Polar an amount equal to any GST Polar must pay for any supply by Polar under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer 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.

## **5. Delivery of Goods**

5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:

a) The Customer or the Customer's nominated carrier takes possession of the Goods at Polar address; or

b) Polar (or Polar nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

5.2 At Polar sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

5.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.

5.4 The Customer must take delivery by receipt or collection of the Goods whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Polar shall be entitled to charge a reasonable fee for redelivery of the Goods and/or the storage of the Goods.

5.5 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:

a) such discrepancy in quantity shall not exceed five percent (5%); and

b) the Price shall be adjusted pro rata to the discrepancy.

5.6 Polar may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.7 Any time or date given by Polar to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and Polar will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

#### **6. Risk**

6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Polar is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Polar is sufficient evidence of Polar rights to receive the insurance proceeds without the need for any person dealing with Polar to make further enquiries.

#### **7. Access**

7.1 The Customer shall ensure that Polar has clear and free access to the work site at all times to enable Polar to undertake the works. Polar will use reasonable endeavours to make good pathways, driveways and concreted or paved or grassed areas.

#### **8. Dimensions, Plans and Specifications**

8.1 All customary industry tolerances shall apply to the dimensions and measurements of the Goods unless Polar and the Customer agree otherwise in writing. Polar shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.

8.2 If the giving of an estimate or quotation for the supply of Goods involves Polar estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of Polar estimated measurements and quantities, before the Customer places an order based on such estimate or accepts such quotation.

8.3 Should the Customer require any changes to Polar estimated measurements and quantities, the Customer shall request such changes in writing. In the case of an estimate before placing an order and in the case of a quotation before acceptance.

#### **9. Customer's Disclaimer**

9.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Polar and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

9.2 Where Polar provides advice to the Customer, such advice is given in good faith only. The Customer acknowledges that Polar shall not be liable for any claims howsoever arising out of any advice given.

#### **10. Insurance**

10.1 Polar shall have public liability insurance of at least \$20m. It is the Customer's responsibility to ensure they are similarly insured.

#### **11. Retention of Title to Goods**

11.1 Polar and the Customer agree that ownership of the Goods shall not pass until:

- a) the Customer has paid Polar all amounts owing to Polar; and
- b) the Customer has met all of its other obligations to Polar.

11.2 Receipt by Polar of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

11.3 It is further agreed that:

- a) until ownership of the Goods passes to the Customer in accordance with clause 11.1 that the Customer is only a bailee of the Goods and must return the Goods to Polar on request
- b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Polar and must pay to Polar the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Polar and must pay or deliver the proceeds to Polar on demand.
- d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Polar and must sell, dispose of

or return the resulting product to Polar as it so directs.

e) the Customer irrevocably authorises Polar to enter any premises where Polar believes the Goods are kept and recover possession of the goods.

f) Polar may recover possession of any Goods in transit whether or not delivery has occurred.

g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Polar.

h) Polar may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### **12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

12.1 The Customer must inspect the Goods on delivery and must within thirty (30) days of delivery notify Polar in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote.

12.2 The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Polar to inspect the Goods.

12.3 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 (Non-Excluded Guarantees).

12.4 Polar acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

12.5 Except as expressly set out in these terms and conditions in respect of the Non-Excluded Guarantees, Polar makes no Warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Polar liability in respect of these warranties is limited to the fullest extent permitted by law.

12.6 If the Customer is a consumer within the meaning of the CCA, Polar liability is limited to the extent permitted by section 64A of Schedule 2.

12.7 If Polar is required to replace the Goods under this clause or the CCA, but is unable to do so, Polar may refund any money the Customer has paid for the Goods.

12.8 If the Customer is not a consumer within the meaning of the CCA, Polar liability for any defect or damage in the Goods is:

a) limited to the value of any express warranty or warranty card provided to the Customer by Polar at the Polar sole discretion;

b) limited to any warranty to which Polar is entitled, if Polar did not manufacture the Goods;

c) otherwise negated absolutely.

12.9 Subject to this clause 14, returns will only be accepted provided that:

a) The Customer has complied with the provisions of clause 14.1; and

b) the Polar has agreed that the Goods are defective; and

c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and

d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

12.10 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, Polar shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

a) the Customer failing to properly maintain or store any Goods;

b) the Customer using the Goods for any purpose other than that for which they were designed;

c) the Customer continuing the use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;

d) the Customer failing to follow any instructions or guidelines provided by the Polar;

e) fair wear and tear, any accident, or act of God.

12.11 Polar may in its absolute discretion accept non-defective Goods for return in which case Polar may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.

### **13. Intellectual Property**

13.1 Where Polar has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Polar.

13.2 The Customer warrants that all designs, specifications or instructions given to Polar will not cause Polar to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer

agrees to indemnify Polar against any action taken by a third party against Polar in respect of any such infringement.

#### **14. Cancellation**

14.1 Polar may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are due to be delivered by giving written notice to the Customer. On giving such notice Polar shall repay to the Customer any money paid by the Customer for the Goods. Polar shall not be liable for any loss or damage whatsoever arising from such cancellation.

14.2 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Polar as a direct result of the cancellation (including, but not limited to, any loss of profits).

#### **15. Privacy Act 1988 – Australian Privacy Principals (APPs) 2014**

15.1 The Customer agrees for Polar to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Polar.

15.2 The Customer agrees that Polar may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- a) to assess an application by the Customer; and/or
- b) to notify other credit providers of a default by the Customer: and/or
- c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- d) to assess the creditworthiness of the Customer. The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

15.3 The Customer consents to Polar being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1) (h) Privacy Act 1988).

15.4 The Customer agrees that personal credit information provided may be used and retained by Polar for the following purposes (and for other purposes as shall be agreed between the Customer and Polar or required by law from time to time):

- a) the provision of Goods; and/or
- b) the marketing of Goods by Polar, its agents or distributors; and/or
- c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- e) enabling the daily operation of the Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

15.5 Polar may give information about the Customer to a credit reporting agency for the following purposes;

- a) to obtain a consumer credit report about the Customer;
- b) allow the credit reporting agency to create or maintain credit or maintain credit information file containing information about the Customer.

15.6 The information given to the credit reporting agency may include:

- a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- b) details concerning the Customer's application for credit or commercial credit and the amount requested;
- c) advice that Polar is a current credit provider to the Customer;
- d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- e) that the Customer's overdue accounts, loan repayments and/or any default that has been listed;
- f) information that in the opinion of Polar, the Customer has committed a serious credit infringement (that is, fraudulently shown an intention not to comply with the Customer's credit obligations);
- g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
- h) that credit provided to the Customer by Polar has been paid or otherwise discharged.

## **16. Credit Reporting Policy**

16.1 Polar Credit Reporting Policy applies specifically to credit related personal and business information which is credit information, credit eligibility information or credit reporting body derived information about an individual or business ("Credit Related Information") and sets out how Polar and its related Australian entities, manages that information. Polar is bound by the Privacy Act 1988 (Cth) ("Act") and the Credit Reporting Privacy Code ("Code") to the extent applicable in relation to that Credit Related Information. This Polar Credit Reporting Policy applies in our Australian Privacy Principals 2014 (APPs) which applies to other personal information. A copy of Polar Credit Reporting Policy in APPs Privacy Policy can be obtained on Polar website.

16.2 By completing the Polar Credit Application or entering into contracts with Polar or otherwise providing Polar with your Credit Related Information, you agree to the terms of this Polar Credit Reporting Policy. Depending on the matter in which you communicate with Polar, further privacy information may apply in addition to the matters discussed in this Polar Credit Reporting Policy.

From time to time Polar may update this Polar Credit Reporting Policy. When changes are made, we will revise the date of the last update listed at the end of this Policy. We encourage you to check our website regularly for any updates to our Polar Credit Reporting Policy and the Polar Privacy Policy.

## **17. Dispute Resolution**

17.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

## **18. Compliance with Laws**

18.1 The Customer and Polar shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.

18.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.

18.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

18.4 Polar maintains an Electrical License Number (Electrical Contractors License Number: 69751)

## **19. Building and Construction Industry Payments Act (Qld) 2004**

19.1 At Polar sole discretion, if there are any disputes or claims for unpaid, Goods then the provisions of the Building and Construction Industry Payments Act (QLD) 2004 may apply.

19.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act (Qld) 2004, except to the extent permitted by the Act where applicable.

## **20. General**

20.1 The failure by Polar to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Polar right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of in which Polar has its principal place of business, and are subject to the jurisdiction of the courts in that state.

20.3 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Polar nor to withhold payment of any invoice because part of that invoice is in dispute.

20.4 Polar may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

20.5 The Customer agrees that Polar may amend these terms and conditions at any time. If Polar makes a change to these terms and conditions, then that change will take effect from the date on which Polar notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Polar to provide Goods to the Customer.

20.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

20.7 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.