

1 INTERPRETATION

1.1 In this Agreement:

- (a) "Agreement" means this Agreement between you and us comprising the Schedule and these Terms and Conditions;
- (b) "Australian Consumer Law" means Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*
- (c) "Force Majeure" means any circumstances beyond our control including (but not limited to) adverse weather, strikes, trade disputes, accidents, fires or supply delays;
- (d) "Goods" means the air conditioning or heating system or other products set out in the Schedule supplied by us to you;
- (e) "Property" means the Customer's property where the Goods are to be installed;
- (f) "Schedule" means the Schedule of details provided with these Terms and Conditions;
- (g) "Services" means the services supplied under this Agreement including installation services and any maintenance services;
- (h) "we" or "us" or "our" or "the Company" or "Seller" means Air Fusion Pty Ltd ACN 169409830;
- (i) "you" or "your" or "customer" means the Customer stated in the Schedule; and
- (j) apart from previously defined terms, all capitalized terms in clause 7.5 have the same meaning ascribed to them in the *Personal Property Securities Act 2009* ("PPSA").

1.2 In this Agreement, unless the subject or the context otherwise requires:-

- (a) words importing the singular include the plural and vice versa;
- (b) words importing one gender include other genders;
- (c) a reference to any party or other person includes that person's successors and permitted assigns;
- (d) a reference to a statute, ordinance or other legislation includes any amendment, replacement or re-enactment for the time being in force and includes all regulations, by-laws and statutory instruments made thereunder;
- (e) a reference to this or any other document includes a reference to that document as amended, supplemented, novated or replaced from time to time;
- (f) a reference to a recital, clause or schedule is a reference to a recital, clause or schedule of this Agreement;
- (g) a reference to writing includes all means of reproducing words in a tangible and permanently visible form;
- (h) a reference to time is a reference to time in the State of Victoria;
- (i) a reference to a person includes a natural person, corporation, partnership, trust, estate, joint venture, sole partnership, government or governmental subdivision or agency, association, co-operative and any other legal or commercial entity or undertaking;
- (j) where the Customer comprises two or more persons any agreement or obligation to be performed or observed by that party binds those persons jointly and each of them severally, and a reference to that party is deemed to include a reference to any one or more of those persons;
- (k) the headings in this Agreement do not affect its interpretation; and
- (l) the recitals and the schedules form part of this Agreement.

2 SUPPLY

- 2.1 You agree to purchase the Goods and Services from us and arrange for us to install the Goods at your Property. You agree to be bound by this Agreement and to pay for the Goods and Services in accordance with this Agreement.
- 2.2 Subject to your compliance with this Agreement including payment to us as set out in this Agreement, we agree to install the Goods on your Property in accordance with this Agreement.

2.3 The Goods and Services are supplied only on the terms and conditions of this Agreement and to the exclusion of any terms and conditions contained in any document submitted by you.

2.4 If as a result of a change in laws or regulations or a Force Majeure event, the costs of the Goods or Services are significantly increased, we can increase amounts payable by you to reasonably reflect such increases or terminate this Agreement by notice in writing. If we elect to increase the amounts payable, you may opt to terminate this Agreement by notice in writing within 7 days of our notice of increase.

3 PAYMENT

- 3.1 You agree to pay us for the Goods and Services strictly as set out in the Schedule
- 3.2 You acknowledge that the fees payable under this Agreement were based upon the information and details supplied by you to us.
- 3.3 You agree that if you fail to pay in accordance with this Agreement, we may:
 - (a) charge interest on debts at 2% above the rate prescribed pursuant to the *Penalty Interest Rates Act (Vic)* from this time;
 - (b) recover all collection costs and expenses including legal costs incurred in collecting overdue accounts;
 - (c) withhold supply; and/or
 - (d) terminate this Agreement.
- 3.4 Any forbearance by us in charging any of the fees or interest or pursuing any other right set out in clause 3.3 does not constitute a waiver of our right to do so in the future.
- 3.5 If a Supply under this Agreement is a Taxable Supply, then at the time the consideration for the Supply is payable, you must also pay all applicable GST as part of the consideration and we must give you a Tax Invoice in respect of this Supply. Capitalised terms in this clause 3.5 that are not otherwise defined in this Agreement have the same meaning as in the *A New Tax System (Goods and Services) Act 1999 (Cth)*.
- 3.6 Where the Property is a commercial property (ie not a house), you hereby charge in favor of us the Property as security for any and all monies owing to us under this Agreement. You hereby authorise us to register a caveat over the Property if you default in making payment of any such amount due to us.

4 THE SITE

- 4.1 You represent and warrant that:
 - (a) you own the Property and have full authority to enter this Agreement and provide us with sufficient access to the Property (including procuring any necessary consents from tenants or other occupants) as may be reasonably necessary for us to install or remove the Goods;
 - (b) that there is no asbestos on the Property which is likely to be disturbed by the installation of the Goods;
 - (c) the installation of the Goods is not restricted by any Owners Corporation, Heritage Listing Registry, town planning requirements or other Government restrictions; and
 - (d) the buildings on the Property are structurally sound and capable of bearing the Goods without damage to the Goods or the Property.
- 4.2 You acknowledge that we are relying upon your representations and warranties in clause 4.1 in calculating the charges payable under this Agreement and in proceeding with the installation services.
- 4.3 You acknowledge that additional installation charges (at our usual rates) may apply in respect of the Services if:
 - (a) you provide us with false or misleading information;
 - (b) the installation presents unreasonable difficulties which could not be reasonably foreseen;
 - (c) the wiring, meter or other infrastructure is deemed unsatisfactory by an electrical authority; or
 - (d) additional parts are required.

4.4 You are responsible for obtaining any necessary planning, development and building permits and approvals which are necessary for the installation of the Goods.

5 INSTALLATION

- 5.1 You grant us permission to install the Goods at the Property and you agree to provide all necessary and reasonable access to us and our employees and contractors to enable the installation of the Goods.
- 5.2 Any times and dates for delivery and installation set out in the Schedule are estimates only.
- 5.3 Subject to prevention or delay by Force Majeure, we will endeavor to complete the installation of the Goods at the Property in accordance with any time requirements or estimates set out in the Schedule.
- 5.4 The components of the Goods are subject to variations and availability by the manufacturers and suppliers.
- 5.5 Our ability to complete the installation and provide the Services is subject to your cooperation and the correctness of your representations and warranties as set out in this Agreement.
- 5.6 You are not relieved of any obligation to accept and pay for the Goods and we will not be liable for any loss or damage whether arising directly or indirectly out of our failure to complete the installation of the Goods or provide the Services in accordance with any time requirements set out in the Schedule. However, if we delay the commencement of the installation by more than 2 months, and such delay does not result from Force Majeure, your delays or regulatory change, you may, as your sole remedy, cancel this Agreement by notice in writing within a further 7 days and we will then refund moneys paid.
- 5.7 We will provide you with an appropriate compliance certificate and system documents as required by any applicable laws or regulations.

6 MAINTENANCE

- 6.1 Subject to your compliance with this Agreement including any applicable payments, we agree to provide the maintenance Services (if any) which are set out in the Schedule at the rates and frequency set out in the Schedule.
- 6.2 You agree to provide us with reasonable access to enable us provide the maintenance Services.
- 6.3 You acknowledge that our ability to provide the maintenance Services is subject to Force Majeure.
- 6.4 The maintenance Services do not include the replacement of any components or parts.

7 TITLE AND RISK

- 7.1 Risk in the Goods passes to you at the time of delivery of the Goods to the Property.
- 7.2 It is your responsibility to obtain appropriate insurance in relation to loss, theft and damage to the Goods at least until title has passed to you under this clause 7.
- 7.3 Title to the Goods passes to you upon the later of completion of the installation of the Goods and full payment by you of all moneys payable by you under this Agreement in respect of the sale and installation of the Goods.
- 7.4 If during the process of the installation any part of the Goods are affixed, attached or secured to the Property, you agree that, until title passes to you under this clause 7, the Goods are deemed not to be a fixture and may be removed by us at any time until title passes to you.
- 7.5 You acknowledge and expressly agree that this clause 7 constitutes a Security Agreement which creates a Security Interest in favor of us in all Goods, including any Commingled Goods, supplied by us to you. You acknowledge and agree that:
 - (a) we may, without providing notice to you, apply to register our Security Interest pursuant to the PPSA and it is the intention of both parties that upon registration of our Security Interest on the personal property securities register ("PPSR"), a Purchase Money Security Interest will result;
 - (b) you agree that we are not required to disclose to an interested person information regarding our Security

Interest unless required to do so by law and that this clause constitutes a Confidentiality Agreement for the purposes of section 275(6) of the PPSA;

- (c) upon our request, you will promptly sign any documents, provide any further information and do anything else reasonably required by us to enable perfection of our Security Interest or registration of a Financing Statement or Financing Change Statement under the PPSA;
- (d) you will not register a Financing Statement of Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods without our prior written consent;
- (e) the Goods are Personal Property and do not become fixtures until payment in full;
- (f) you will not grant any other Security Interest or any lien over the Goods;
- (g) you will give us not less than 14 days written notice of any proposed change in your name or contact details; and
- (h) you waive any rights you may have to receive any notices required under sections 95, 118, 121, 130, 132, 135 and 157 of the PPSA.

8 DEFAULT/TERMINATION

If you:

- 8.1 fail to pay for any Goods on the due date; or
- 8.2 otherwise breach this Agreement and fail to rectify such breach within 7 days notice; or
- 8.3 cancel delivery of the Goods; or
- 8.4 commit an act of bankruptcy; or
- 8.5 allow a trustee in bankruptcy or receiver and manager to be appointed to you or any of your property; or
- 8.6 allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against your property or a mortgagee enters into possession of the Property; or
- 8.7 are a company and:-
- 8.8 proceedings are commenced to wind you up or any of your subsidiaries; or
- 8.9 a controller, receiver, administrator, liquidator or similar officer is appointed to you or in respect of any part of your property;
- 8.10 then we and our agents may enter upon the Property (doing all that is necessary to gain access where the Goods supplied under this Agreement are situated at anytime and retake possession of any or all of the Goods we have supplied to you; and
- 8.11 we reserve the right to resell the Goods concerned; and
- 8.12 terminate the Agreement.

9 WARRANTY

- 9.1 To the extent that our Goods and Services provided to you under this Agreement cost up to \$40,000:
 - (a) our Goods come with consumer guarantees under the Australian Consumer Law which cannot be excluded;
 - (b) you are entitled to:
 - (i) a replacement or a refund for a 'major failure' as defined under section 260 and 268 of the Australian Consumer Law;
 - (ii) compensation for any other reasonably foreseeable loss or damage; and
 - (iii) have the Goods repaired or replaced (the election of which is at our sole discretion) if the Goods fail to be of acceptable quality and the failure does not amount to a 'major failure' as defined under section 260 and 268 of the Australian Consumer Law.
- 9.2 The Goods provided by us to you under this Agreement are subject to the manufacturer's warranties against defects for the period set out in such warranties.
- 9.3 To make a claim under any of the manufacturer's warranties listed in clause 9.2 please write to us at 1/38 Bridge Street Eltham Victoria 3095 or call 03 94392749 within the relevant manufacturer's warranty period.
- 9.4 Claims against any of the warranties in clause 9.1 must be made within the manufacturer's warranty period. You are

not entitled to claim the manufacturer's warranty if you make a claim after the manufacturer's warranty period has ended.

- 9.5 In order for you to be entitled to make a claim under any of the relevant manufacturer's warranties, any defect in the Goods or Services provided to you under this Agreement must appear within the relevant warranty period.
- 9.6 You agree to bear the expense of claiming any warranty under clause 9.
- 9.7 The benefits provided to you under any manufacturer's warranty sit alongside, and in addition to, other rights and remedies you have under the Australian Consumer Law.
- 9.8 The manufacturer's warranties are in substitution for and exclude all express or implied statutory or other conditions, warranties, guarantees or liabilities and shall prevail over any representations or collateral agreements to the contrary except to the extent that such conditions, warranties, guarantees and liabilities are implied herein by law and cannot be lawfully excluded. It is your responsibility to determine whether or not the Goods and Services will be suitable for your needs.
- 9.9 The performance of the Goods is subject to various variable factors including the location of the Goods, hours of sunlight, other weather conditions, surrounding trees and buildings.
- 9.10 Whilst we will endeavor to install the Goods in a suitable position, we do not guarantee the performance of the Goods and you acknowledge and agree that we are not responsible for performance lower than expectation arising from the position of the Goods or various variable factors including as set out in clause 9.9.
- 9.11 We do not make any representations or give any warranties in relation to the Goods or the Services except for the representations and warranties set out in this Agreement and those that cannot be excluded from this Agreement. To the extent permitted by law, our liability for a breach of any express or implied condition or warranty is limited (at our option) to the repair or replacement of the Goods or a refund of moneys paid by you.
- 9.12 Except to the extent to which clause 9.1 applies, under no circumstances will we be liable for:
- (a) any indirect, consequential or special loss or damage, including but not limited to loss of profits, loss of revenue, advantage or benefit, loss of rental income, loss of business opportunity, loss of business goodwill; or
 - (b) any structural damage arising from the Goods or the Services.
- 9.13 The warranties set out in clause 9 do not apply to loss, damage or failure if resulting from:
- (a) failure to use and operate the Goods in accordance with manufacturers' or our instructions;
 - (b) fair wear and tear;
 - (c) misuse or abuse;
 - (d) neglect or accident;
 - (e) alteration or repair other than by or with our authority; or
 - (f) any events of Force Majeure.

10 GENERAL

- 10.1 This Agreement is governed by the laws of the state of Victoria. You and the Company irrevocably submit to the exclusive jurisdiction of the Court of Victoria and the Federal Court sitting in Victoria.
- 10.2 This Agreement embodies the whole agreement between the parties and exclude any terms and conditions contained in any document or internet transmission from you relevant to the supply of the Goods. All previous dealings, representations and arrangements are hereby excluded and cancelled.
- 10.3 Should any part of these terms and conditions be held to be void or unlawful, these terms and conditions will be read and enforced as if the void or unlawful provisions have been deleted.

Guarantee and Indemnity

In consideration of the Seller entering into an Agreement ("The Agreement") for the supply of an order of goods and or services as outlined in the attached Terms and Conditions of Supply and Installation to the Customer named therein, and if the Customer is a company, the person or persons described in the Schedule hereto as the Guarantor (the "Guarantor"), by signing this agreement of guarantee, AGREES WITH AND GUARANTEES AND INDEMNIFIES the Seller as follows:-

- 1) The Guarantor shall pay the Seller on demand all monies payable pursuant to the Agreement which are not paid by the Customer within the time prescribed in the Agreement for payment thereof whether demand for the same has been made by the Seller on the Customer or not.
- 2) The Guarantor shall observe and perform on demand all covenants conditions obligations and liabilities binding the Customer with which the Customer does not comply within the time prescribed in the Agreement for observance or performance thereof whether demand for such observance or performance has been made by you on the Customer or not.
- 3) The Seller may without affecting this Guarantee grant time or other indulgence to or compound or compromise with or release the Customer or any person or corporation (including any person or corporation liable jointly with the Guarantor in respect of any other Guarantee or security) or release part with abandon vary relinquish or renew in whole or in part any security document of title asset or right held by you.
- 4) All monies received by the Seller from or on account of the Customer including any dividends upon the liquidation of the Customer or from any other person or corporation or from the realization or enforcement of any security capable of being applied by the Seller in reduction of the indebtedness of the Customer shall be regarded for all purposes as payment in gross without any right on the part of the Guarantor to stand in the Seller's place or claim the benefit of any monies so received until the Guarantor has paid the total indebtedness of the Customer and so that in the event of the liquidation of the Guarantor the Seller shall be entitled to prove for the total indebtedness of the Customer.
- 5) In the event of the liquidation of the Customer the Guarantor authorises the Seller to prove for all monies which the Guarantor has paid hereunder and to retain and to carry to a separate account and if appropriate at the Seller's discretion any dividends received until the Seller has with the aid thereof been paid in full in respect of the indebtedness of the Customer to the Seller. The Guarantor waives all rights against the Seller and the Customer and any other person or corporation estates and assets so far as necessary to give effect to anything continued in this Guarantee.
- 6) The Seller's remedies against the Guarantor are not to be affected by reason of any security held or taken by the Seller in relation to the indebtedness of the Customer being voided effective or informal.
- 7) The Guarantor indemnifies the Seller against any losses or damages the Seller may suffer as a result of the Customer having breached its obligations pursuant to the Agreement including but not limited to legal fees and expenses and any loss or damage suffered by the Seller by reason of the Customer (being a Company) having exceeded its powers or going into liquidation and, in particular, the Guarantor indemnifies the seller against any loss the Seller may suffer by reason of interest ceasing to accrue and to be payable after the Customer goes into liquidation.
- 8) Any demand or motive under this Guarantee may be made in writing signed by the Seller and (without prejudice to any other mode of service permitted by law) may be served on the Guarantor by pre-paid registered letter addressed to the address of its registered office for the time being in Australia. Any such notice when posted shall be deemed to be properly given the day after posting.

- 9) Where there are two or more Guarantors the expression "the Guarantor" shall be deemed to include the Guarantor jointly and each or all of them severally.

PRINCIPAL GUARANTOR

PRINTED NAME OF THE GUARANTOR:

DATE OF BIRTH:

CURRENT RESIDENTIAL ADDRESS:

SIGNATURE

DATE: _____

WITNESS SIGNATURE

DATE: _____

ADDITIONAL GUARANTOR

PRINTED NAME OF THE GUARANTOR:

DATE OF BIRTH:

CURRENT RESIDENTIAL ADDRESS:

SIGNATURE

DATE: _____

WITNESS SIGNATURE

DATE: _____