

ARW - Air Conditioning Refrigeration Wholesale Pty Ltd T/A ARW - Terms & Conditions of Trade

1. Definitions

- 1.1 "ARW" means ARW - Air Conditioning Refrigeration Wholesale Pty Ltd T/A ARW, its successors and assigns or any person acting on behalf of and with the authority of ARW - Air Conditioning Refrigeration Wholesale Pty Ltd T/A ARW.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by ARW to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between ARW and the Client in accordance with clause 2 below.

2. Price and Payment

- 2.1 The Price shall be as indicated on invoices provided by ARW to the Client in respect of the Goods supplied.
- 2.2 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation, or any other order forms. If no time is stated then payment will be due (30) days following the date of the invoice.
- 2.3 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to ARW an amount equal to any GST ARW must pay for any supply by ARW under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client 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.

3. Risk

- 3.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 3.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, ARW is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ARW is sufficient evidence of ARW's rights to receive the insurance proceeds without the need for any person dealing with ARW to make further enquiries.

4. Title to Goods (including any incidental items supplied as part of any Services)

- 4.1 ARW and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid ARW all amounts owing to ARW; and
 - (b) the Client has met all of its other obligations to ARW.
- 4.2 Receipt by ARW 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.
- 4.3 It is further agreed that:
 - (a) until ownership of the Goods passes to the Client in accordance with clause 4.1 that the Client is only a bailee of the Goods and must return the Goods to ARW on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for ARW and must pay to ARW the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for ARW and must pay or deliver the proceeds to ARW on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of ARW and must sell, dispose of or return the resulting product to ARW as it so directs.
 - (e) the Client irrevocably authorises ARW to enter any premises where ARW believes the Goods are kept and recover possession of the Goods.
 - (f) ARW may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client 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 ARW.
 - (h) ARW may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

5. Personal Property Securities Act 2009 ("PPSA")

- 5.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 5.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by ARW to the Client.
- 5.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ARW may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 5.3(a)(i) or 5.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, ARW for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of ARW;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of ARW;
 - (e) immediately advise ARW of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 5.4 ARW and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 5.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 5.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

5.7 Unless otherwise agreed to in writing by ARW, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

5.8 The Client must unconditionally ratify any actions taken by ARW under clauses 5.3 to 5.5.

5.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

6. Security and Charge

- 6.1 In consideration of ARW agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 6.2 The Client indemnifies ARW from and against all ARW's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ARW's rights under this clause.
- 6.3 The Client irrevocably appoints ARW and each director of ARW as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 6 including, but not limited to, signing any document on the Client's behalf.

7. Default and Consequences of Default

- 7.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at ARW's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 7.2 If the Client owes ARW any money the Client shall indemnify ARW from and against all costs and disbursements incurred by ARW in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ARW's Contract default fee, and bank dishonour fees).

8. Privacy Act 1988

- 8.1 The Client agrees for ARW to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by ARW.
- 8.2 The Client agrees that ARW may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 8.3 The Client consents to ARW being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 8.4 The Client agrees that personal credit information provided may be used and retained by ARW for the following purposes (and for other purposes as shall be agreed between the Client and ARW or required by law from time to time):
 - (a) the provision of Goods; and/or
 - (b) the marketing of Goods by ARW, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client'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 Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 8.5 ARW may give information about the Client to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 8.6 The information given to the credit reporting agency may include:
 - (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that ARW is a current credit provider to the Client;
 - (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 Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of ARW, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by ARW has been paid or otherwise discharged.

9. General

- 9.1 The failure by ARW to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect ARW's 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.
- 9.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Western Australia in which ARW has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 9.3 ARW shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by ARW of these terms and conditions (alternatively ARW's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 9.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by ARW nor to withhold payment of any invoice because part of that invoice is in dispute.
- 9.5 The Client 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.