

TERMS & CONDITIONS FOR SUPPLY OF EQUIPMENT & SERVICES

1. Definitions and Interpretation

1.1. Definitions

(a) In these Terms and Conditions unless the context otherwise requires:

- (i) "Business Day" means any day except Saturday or Sunday or a day that is a public or bank holiday in NSW and/or the state works are being carried out;
- (ii) "Commencement" means the date specified in the Quotation (if any) for commencement of the Works under the Contract;
- (iii) "Completion" means the date specified in the Quotation (if any) estimated for completion of the Works under the Contract;
- (iv) "Confidential Information" means all information passing from APRACS to the Customer relating to the Quotation, including but not limited to, trade secrets, drawings, know-how, techniques, concepts, projections, arrangements and Deeds with third parties, APRACS information and information proprietary to APRACS, formulae, concepts not reduced to material form, designs, plans, models, financial data and pricing lists, other than information which is in the public domain for any reason other than by the breach of these terms and conditions by the Customer;
- (v) "Contract" means the Contract arising between APRACS and the Customer as a result of the Customer accepting the Quotation (which incorporates these Terms and Conditions);
- (vi) "Controller" has the same meaning as in the PPSA;
- (vii) "Customer" means the Customer referred to in the Quotation;
- (viii) "Deposit" means the amount specified in the Quotation and which is payable by the Customer to APRACS immediately upon formation of the Contract;
- (ix) "Documentation Costs" means all fees and outlays associated with the registration of any Security Interest on the PPSR;
- (x) "Equipment" means the equipment and/or goods and/or materials and, where applicable, includes installation and any other related services, of all which that are either specified in the Quotation or reasonably necessary to complete, comply with and/or fulfil the Quotation;
- (xi) "Grantor" means the Customer;
- (xii) "GST Act" means the Act titled A New Tax System (Goods and Services Tax) Act 1999 as amended from time to time;
- (xiii) "GST" has the meaning given to this term by the GST Act;
- (xiv) "APRACS" means Andrew Presbury Refrigeration & Air-Conditioning Services of 178 Walker Street, Casino, New South Wales (ABN 89 061 104 664);
- (xv) "Personal Property" has the same meaning as in the PPSA as it relates to:
 - (A) all personal property of the Grantor, including without limitation present and after acquired property of the Grantor;
 - (B) any personal property provided by the Secured Party to the Grantor on a retention of title basis;
 - (C) any personal property leased or provided on bailment by the Secured Party to the Grantor; and
 - (D) including without limitation, any Proceeds associated with the above personal property.
- (xvi) "PMSI" means a purchase money security interest as defined in the PPSA;
- (xvii) "PPSA" means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it;
- (xviii) "PPSR" means the Personal Property Securities Register established pursuant to the PPSA;
- (xix) "Price" means the price to be paid by the Customer to APRACS for the performance of the Works in accordance with the Quotation;
- (xx) "Proceeds" has the same meaning as in the PPSA;
- (xxi) "Provisional Sum" is the amount that is APRACS's estimate of the cost of performing this part of the Works, for which APRACS, after making all reasonable enquiries, can not determine a definite amount at the time a Contract is entered into;
- (xxii) "Quotation" means the written quotation attached hereto provided by APRACS to the Customer which may specify the scope of the Works, any Deposit, the Commencement Date, Completion Date of the Works and the Price of the Works and which will incorporate and will be governed by these Terms and Conditions;
- (xxiii) "Security Interest" has the same meaning as in the PPSA;
- (xxiv) "Secured Moneys" has the same meaning as defined in clause 18;
- (xxv) "Secured Party" means APRACS or any lawful assignee, transferee or successor of APRACS in relation to the Security Interest, the Contract and any other related document(s);

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- (xxvi) "Servants" means and includes, but is not limited to, servants, employees, agents, contractors and sub-contractors;
- (xxvii) "Site" means where the Works under the Contract are carried out as specified in the Quotation;
- (xxviii) "Special Conditions" means the additional terms and conditions specified in the Quotation;
- (xxix) "Terms and Conditions" means these Terms and Conditions for Supply of Equipment and Services;
- (xxx) "Variation" means to vary the Works by:
- (A) carrying out additional work;
 - (B) omitting any part of the Works; or
 - (C) changing the scope of the Works;
- (xxxi) "Works" means the work to be carried out under the Contract as specified in the Quotation including Variations and Equipment to be supplied in effecting the Works or to be incorporated into the Site;
- (xxxii) "Written" means communication in written form including by facsimile, email, SMS (Short Message Service) or similar electronic means.
- 1.2. Interpretation
- (a) In these Terms and Conditions unless the context otherwise requires:
 - (i) the singular includes the plural and vice versa;
 - (ii) a reference to a person includes an individual and a corporation, partnership, joint venture, association, authority, trust, State or Government and vice versa;
 - (iii) a person includes the legal personal representatives, successors and assigns of that person;
 - (iv) a reference to any gender includes all genders;
 - (v) a reference to a recital, clause, schedule, annexure, appendix or exhibit is to a recital, clause, schedule, annexure, appendix or exhibit of or to the Contract;
 - (vi) a recital, schedule, annexure, appendix or exhibit or description of the parties forms part of the Contract;
 - (vii) a reference to the Contract or document is to that Contract or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
 - (viii) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
 - (ix) where an expression is defined anywhere in the Contract it has the same meaning throughout;
 - (x) a reference to "dollars" or "\$" is to an amount in Australian currency; and
 - (xi) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any subordinate legislation issued under, that legislation or legislative provision.
 - (xii) All headings throughout these Terms and Conditions have been inserted for the purpose of ease of reference only and will not define, limit or affect the meaning or interpretation of the Contract or these Terms and Conditions.

2. Law

2.1. The Contract shall be governed by and construed in accordance with the laws of NSW and/or the state works are being carried out and the parties agree to submit to the jurisdiction of the Courts of that State in all matters arising out of the Contract.

3. Formation of the Contract

3.1. The Customer may accept the Quotation within the period specified in the Quotation or as extended pursuant to this sub-clause. If requested, APRACS may, at its option and absolute discretion, extend the period of the Quotation by notice in writing to the Customer. For the sake of clarity, if the period of the Quotation (as specified in the Quotation or as extended pursuant to this sub-clause) lapses/ expires, then acceptance of the relevant Quotation by the Customer does not create, and is incapable of creating, a Contract.

3.2. APRACS may, at its absolute discretion, and without incurring any liability to the Customer whatsoever, revise or withdraw the Quotation at any time before communication by the Customer to APRACS of its acceptance of the Quotation in writing.

3.3. The Customer may accept the Quotation by signing and returning a copy of the Quotation to APRACS or otherwise acknowledging and agreeing to the Quotation. At such time, the parties will be deemed to have formed a Contract.

3.4. In the event of any inconsistency between the Quotation and the Contract, the Quotation will prevail.

4. Variations

4.1. Any party seeking a Variation to the Contract shall notify the other party of the details of the required changes.

4.2. Where both parties consent to varying the Contract, a Variation document will be prepared by APRACS (where practicable) which will:

- (a) be signed by both the Customer and APRACS;
- (b) state the scope of the Variation;
- (c) state the reason for the Variation;

4.3. If a Variation varies the Price then the Price is to be adjusted accordingly in the next payment made after the Commencement of the Works which is the subject of the Variation.

5. Defects in Existing Installation

5.1. For the purposes of the Quotation, it is assumed (unless otherwise specified in the Quotation) that the existing installations comply with statutory regulations and are in a reasonable state of repair.

5.2. Should APRACS in the course of any Works, discover any defect or non-compliance in any part of the Site, premises or the existing installation therein or connection thereto which makes it impracticable, unlawful or inexpedient for APRACS to continue Works under the Contract without repairing or replacing any part of the said Site, premises, installation or connection (and APRACS shall be the sole judge thereof) APRACS shall be entitled to suspend Works on the job and shall immediately notify the Customer

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thereof and submit the Price of such additional Works in accordance with clause 4 and if the Customer shall fail to sign the Variation for APRACS to carry out the same the Contract shall be deemed at an end and APRACS shall be entitled to payment for all Works done and Equipment supplied to date of the suspension of the Works, notwithstanding anything to the contrary contained in the Contract.

6. APRACS's Warranty

6.1. APRACS does not warrant the quality or performance of any Equipment supplied or installed by APRACS. It is the Customer's responsibility to establish the warranty relationship with the manufacturer by ensuring that warranty cards or other registration requirements of the manufacturer of any Equipment supplied or installed by APRACS are complied with.

7. Payments

7.1. The Customer shall pay to APRACS the Deposit (if any) upon the formation of the Contract.

7.2. The Customer will pay APRACS the Price by way of progress payments, calculated in accordance with Clause 7.3 (in addition to paying the Deposit pursuant to Clause 7.1).

7.3. APRACS may submit to the Customer written progress claims which may be in the form of a Tax Invoice, under the GST Act, and consist of:

- (a) the amount payable for Works carried out and which have not previously been charged; and
- (b) any other amounts then payable to APRACS under the Contract.

7.4. The Customer must pay the progress claim within seven (7) business days of submission of the progress claim (the "Due Date").

7.5. Should the Customer neglect or refuse to pay the amount of any progress claim by the Due Date, then APRACS may, at its option, with or without notice to the Customer, suspend performance of the Works until such payment has been received in full.

7.6. APRACS shall be entitled to charge interest on any moneys not paid when due at the rate specified in the Quotation or if no rate is specified in the Quotation, calculated in accordance with the interest rate set by the local court.

8. GST

8.1. APRACS warrants that as at the date of the Contract, APRACS is registered under the GST Act and that APRACS is not aware of any circumstances existing which would require the Commissioner of Taxation to cancel the registration.

8.2. Unless expressly stated to the contrary, any Price, Provisional Sum or the costs of any Variation (for the purposes of this clause, referred to collectively and individually as, "costs") is exclusive of GST. The Customer shall pay any GST applicable to any supply in terms of the GST Act in addition to any costs.

9. Credit Card Surcharge

9.1. APRACS will charge a fee for accepting payment of moneys due and owing under the Contract by way of credit card. The amount of the fee will be equivalent to one and a half percent (1.5%) of the amount of any such payment(s).

10. Increased and Cancellation Costs

10.1. If, after 30 days from the formation of the Contract, APRACS's costs in connection with the Contract are increased as a result of the introduction of new, or changes to existing, government taxes or charges or Provisional Sums (or under Clause 10.2) then the Price shall be increased to reflect such changes and the Customer shall pay the increased Price to APRACS in accordance with the provisions of clause 7.

10.2. Where Equipment to be supplied has increased in price after the Contract was formed, then the Price shall be varied by the amount of the difference between the price of such Equipment at the time the Contract was entered into and the actual cost to APRACS including any duty or tax payable thereon.

10.3. If the Contract, or any part of the Works is postponed or cancelled by the Customer, then the Customer shall reimburse to APRACS all costs and expenses actually incurred by it in relation to its preparation for undertaking the Works together with (at the election of APRACS) an amount equivalent to the profit which APRACS would have made had the Works not been so cancelled or postponed.

11. Excepted Risks

11.1. APRACS shall not be liable for any failure to perform its obligations under the Contract if such failure or delay results directly or indirectly from any cause, matter or thing beyond the reasonable control of APRACS, including but not limited to:

- (a) any act, default or omission on the part of the Customer, its employees and or agents or any third party carrying out work on the Site;
- (b) the timing of work performed or not performed on the Site by other contractors;
- (c) damage by fire, explosion, earthquake, lightning, storm, flood, acts of God, civil or military authority, public enemy, war, civil commotion, strikes, labour disputes or industrial conditions;
- (d) electric power supply failure;
- (e) inclement weather;
- (f) unavailability of suitable Equipment;
- (g) failure of transportation affecting APRACS, its supplier or any other person, company or firm;
- (h) variations directed by the Customer or required to complete the Works safely and effectively;
- (i) changes in the law; or
- (j) directions or delays by municipal, public or statutory authorities.

12. Risk and Ownership

12.1. Risk of loss, damage or destruction to the Works or any part thereof shall pass to the Customer as and when each part thereof is completed.

12.2. If any fixtures, fittings, or Equipment are supplied by the Customer all care will be taken but fixtures, fittings and Equipment

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so supplied will be stored, handled and installed at the Customer's risk.

12.3. The Customer has no right or claim to any interest in the Equipment to secure any liquidated or unliquidated debt or obligation APRACS owes to the Customer. The Customer cannot claim any lien over the Equipment.

12.4. The Customer will not create any interest in the Equipment in relation to any third party except as may be authorised by APRACS.

12.5. Where the Customer is in actual or constructive possession of the Equipment the Customer will not deliver them or any document of title to the Equipment to any person except as directed by APRACS and is in possession of the Equipment as a bailee of that Equipment and owes APRACS the duties and liabilities of a bailee.

12.6. The property of APRACS in the Equipment remains with APRACS until APRACS has received payment in full of the Price and any other moneys due to APRACS under the Contract.

12.7. The Customer is a bailee of the Equipment until such time as property in them passes to the Customer and this bailment continues in relation to all of the Equipment until the Price of the Contract has been paid in full.

12.8. Pending payment in full of the Price under the Contract, the Customer must not allow any person to have or acquire any security interest in the Equipment.

12.9. Despite clause 12.8, if the Customer supplies any of the Equipment to any person before all moneys payable by the Customer have been paid to APRACS (and have not been claimed or clawed-back by any person standing in the place of or representing the Customer or third party), the Customer agrees that:

(a) it holds the proceeds of re-supply of the Equipment on trust for and as agent for APRACS immediately when they are receivable or received;

(b) it must either pay the amount of the proceeds of re-supply to APRACS immediately when they are received or pay those proceeds into an account with a bank or financial institution or deposit-taking institution as trustee for APRACS;

(c) any accessory or item which accedes to any of the Equipment by an act of the Customer or of any person at the direction or request of the Customer becomes and remains the property of APRACS until APRACS is paid in accordance with clause 12.6 when the property in the Equipment passes to the Customer;

(d) if the Customer fails to pay the Price or any part thereof, at the time or times required by the Contract or is otherwise indebted to APRACS, APRACS may recover possession of the Equipment at any site owned, possessed or controlled by the Customer and the Customer agrees that APRACS has an irrevocable licence to do so and to dispose of the Equipment to recover costs.

13. Completion

13.1. Any date of Completion stated in the Quotation is an estimate only. APRACS will not be liable for any delays in any date of Completion or late delivery and will not be liable for any loss, damage or delay occasioned by the Customer or any other persons arising from the late Completion or delivery.

13.2. APRACS's Quotation in respect of the Works is based on a continuous works programme, unless otherwise stated. If the Customer causes any of the Works to be delayed or delays are caused by any of the events in Clause 11, then, without prejudice to APRACS's other rights hereunder, the Customer shall pay to APRACS such extra costs as are reasonably incurred by APRACS by reason of the delay including compensation for loss of profit, additional overheads or administrative expenses incurred as a result.

14. Hours of Work

All Works will be carried out during normal working hours, being 9.00 am to 5.00 pm Monday to Friday, unless otherwise stated. Should the Customer require APRACS to carry out any of the Works outside the nominated hours, or it otherwise be reasonably necessary to do so, then APRACS may carry out the Works outside those hours in which event, the Price will be increased to reflect any increased costs, such as payment of wages at a higher rate, for that part of the Works performed outside of the nominated hours and the Customer shall pay the increased Price to APRACS in accordance with the provisions of Clause 10.

15. Customer Responsibilities

15.1. The Customer acknowledges that where the Equipment has been supplied to the Customer the features of the Equipment are not designed to be a substitute for operator vigilance and adherence to safety operating procedures, ensuring that the components of the Equipment are correctly configured,

15.2. Any instruction provided in relation to the Equipment relates to the features of the Equipment only. The Customer is entirely responsible for training all operators of the Equipment and for ensuring that any operators are competent and appropriately supervised.

15.3. The Customer agrees to comply with all applicable laws and best practice standards for the regular inspection or maintenance of the Equipment.

15.4. The Customer agrees to follow the instructions provided by APRACS in using the Equipment. APRACS will not be responsible for any collision, accident, explosion, damage, death or injury caused or contributed to by any person under the Customer's direction or control failing to follow the operating instructions for the Equipment.

16. Damages

16.1. To the extent permitted by law, any liability of APRACS to the Customer under the Contract shall be limited as follows:-

(a) in the case of Equipment supplied, to the replacement of the Equipment or the supply of equivalent Equipment, the payment of the costs of replacing the Equipment or of acquiring equivalent Equipment or the payment of the costs of having the defective Equipment rectified, at the election of APRACS;

(b) in the case of Works performed, the re-execution of the Works or the payment of the costs of having the Works performed again, at the election of APRACS;

16.2. APRACS, notwithstanding any right the Customer may have at law or in equity or otherwise under the Contract, shall not be liable for any loss or damages suffered by the Customer for any economic loss or consequential loss or damage including but not

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limited to, loss of profits, loss of opportunity or loss of use of the Site or of the benefit of the Works or any part thereof.

17. Insurance

17.1. The Customer shall effect and maintain at all times whilst any work is being carried out by APRACS under the Contract, Public Liability Insurance covering any loss or damage or injury sustained by APRACS or any of its Servants as a consequence of any defect with the Site or any part thereof.

17.2. The Customer shall provide APRACS with, if requested, evidence of the existence of such policies.

18. PPSA

18.1. This clause applies to the extent that the Contract provides for a Security Interest for the purposes of the PPSA.

18.2. The rights of APRACS under this document are in addition to and not in substitution for APRACS's rights under other law (including PPSA) and APRACS may choose whether to exercise rights under this document, and/or under other law, as it sees fit.

18.3. The Customer acknowledges that if APRACS's interest under the Contract, and any other related document(s), is a Security Interest for the purposes of the PPSA then that Security Interest relates to the Personal Property and all Proceeds of any kind and the Contract is a security agreement for the purposes of the PPSA.

18.4. APRACS may register its Security Interest on the PPSR (including, without limitation, as a PMSI). The Customer must do anything (such as obtaining consents and signing documents) which APRACS requires for the purposes of:

- (a) ensuring that APRACS's Security Interest is enforceable, perfected and otherwise effective under the PPSA;
- (b) enabling APRACS to gain first priority (or any other priority agreed to by APRACS in writing) for its security interest; and
- (c) enabling APRACS to exercise rights in connection with the security interest.

18.5. The Customer must pay on demand to APRACS the Documentation Costs.

18.6. If Chapter 4 of the PPSA does apply to the enforcement of a Security Interest arising under or in connection with the Contract and to the maximum extent permitted by law, the Customer agrees that sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1); 135, 142 and 143 and Division 6 of Part 4.3 of the PPSA will not apply to the enforcement of that Security Interest.

18.7. Where a person is a Controller in relation to the Personal Property, the parties agree, to the maximum extent permitted by law, that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Personal Property by that Controller.

18.8. The Customer waives its right (including, without limitation, under s 275) to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

18.9. The Customer must not assign or grant a Security Interest in the Contract or any of its rights or obligations under the Contract without the prior written consent of APRACS.

18.10. The Customer must not create, purport to create or permit to be created any Security Interest in the Equipment or lease, hire, bail, sell or give possession of the Equipment to anyone else other than with the express written consent of APRACS.

19. Notices

19.1. Except otherwise provided herein, any notice under the Contract shall be given in writing. If delivered by prepaid post to the address the party to whom the notice is given may have notified to the other party, such notice shall be deemed to have been received two (2) business days after the date of posting.

20. Confidentiality

20.1. The attached Quotation and any documents attached thereto contain Confidential Information for the use of the Customer only.

20.2. The Customer shall not disclose the Confidential Information or suffer or permit it to be disclosed to any person or company whatsoever except with the prior written consent of APRACS and then only on the basis that it is respected in the same manner as herein provided.

20.3. Without limiting the generality of clause 21.2 the Customer shall not:

- (a) take any action or use any process based on the Confidential Information without the consent in writing of APRACS; or
- (b) use or disclose to a third party any aspect of the Confidential Information for any purpose whatsoever.

20.4. The obligations of the Customer under this clause 21 shall survive the finalisation or discontinuance by APRACS of its negotiations with the Customer in respect to the Quotation and shall continue for so long as the Quotation shall remain Confidential Information.

21. Intellectual Property

21.1. APRACS owns all copyright throughout the world in the Quotation and any documents attached thereto which have been prepared by APRACS for the purposes of the Quotation including any drawings, plans, designs or pricings.

22. Privacy Act 1988 (Cth)

22.1. The personal information provided by the Customer will be held by APRACS.

22.2. APRACS may use the personal information provided by the Customer for the purposes of completing the Works and for direct marketing of products and other services offered by APRACS or an organisation it is affiliated with or represents. The Customer has the right to request not to receive direct marketing material.

22.3. The Customer consents to APRACS collecting and using its personal information as specified above.

23. Set-off

23.1. APRACS may set-off against any moneys owing by it to the Customer, any moneys owing by the Customer to APRACS.

24. Unenforceable Provisions and Severance

24.1. If a provision of the Contract is void, voidable, unenforceable or illegal but would not be if it was read down, it shall be read down and if it would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words are severed, but should the provision nevertheless be void, voidable, unenforceable or illegal, it shall be severed yet the remainder of the Contract will remain in full force and effect. the Contract will remain in full force and effect.

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