

**BAW BAW REFRIGERATION & AIR CONDITIONING TRADING TERMS AND CONDITIONS**

**1. DEFINITIONS**

- 1.1. The Supplier is K&K Hughes Pty Ltd A.C.N. 168 335 706 (aff Hughes Family Trust) of Factory 4/8 Normanby Street, Warragul VIC 3820.
- 1.2. The Customer is the party or any person acting on behalf of and with the authority of the Customer that the Order is provided for.
- 1.3. The Order shall be defined as any request for the provision of Goods and/or Services by the Customer with the Supplier which has been accepted by the Supplier.
- 1.4. Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 1.5. Major failure refers to Major failure as defined under the *Competition and Consumer Act 2010* and the *Fair Trading Acts* in each of the States and Territories of Australia.

**2. GENERAL**

- 2.1. These Terms and Conditions together with the Supplier's written or verbal quotation form this Agreement.
- 2.2. Any Order requested by the Customer is deemed to be an Order incorporating these Terms and Conditions and may not be varied unless expressly agreed to by the Supplier in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these Terms and Conditions will prevail.
- 2.3. No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Supplier.
- 2.4. The Terms and Conditions are binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.5. Where more than one Customer completes this Agreement each shall be liable jointly and severally.
- 2.6. 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 and the offending provision shall be deemed as severed from these Terms and Conditions.
- 2.7. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer.
- 2.8. The failure by the Supplier to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.
- 2.9. Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.

**3. PLACEMENT OF ORDERS**

- 3.1. Orders placed by the Customer with the Supplier will be considered valid when placing the Order verbally and/or in writing.
- 3.2. Any written Quotation given by the Supplier shall expire fourteen (14) days after the date of the written quotation. Quotations may also be provided to the Customer verbally.
- 3.3. All prices are based on taxes and statutory charges current at the time of the Quotation. Should these vary during the period from the date of the Quotation to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

**4. PRICE**

- 4.1. GST will be charged on the Goods and Services provided by the Supplier that attract GST at the applicable rate.
- 4.2. The Supplier reserves the right to change the Price to the Supplier's Order in the event of a variation which was previously unknown or unforeseen by the parties at the time the Order was placed, and notice will be provided in writing by the Supplier within a reasonable time.

**5. SUPPLY AND DELIVERY OF GOODS AND/OR SERVICES**

- 5.1. At any time before payment is made by the Customer, the Supplier reserves their right to decline requests for any Goods/Services, or cancel or postpone the delivery of Goods/Services at their discretion. If the Services are conducted at the Customer's premises:
  - 5.2.1. The Customer covenants he/she is either the owner of the premises or acting with the authority of the owner.
  - 5.2.2. The Customer grants full access to the Supplier its servants and agents to its premises to enable it to carry out the Services. The Customer shall supply water and/or electricity to the Supplier to carry out the Order at no costs to the Supplier.
  - 5.2.3. At the sole discretion of the Supplier, if the Customer fails to attend an appointment without prior notice or provide proper access to the premises, the Supplier may charge a fee for its costs of attendance and/or its costs of cancelling the appointment.
  - 5.2.4. The Supplier shall not be held responsible for any delay or failure to provide the Goods/Services if the Supplier's work is interfered with or no proper or safe access is provided to the Supplier.
- 5.3. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Goods/Services at specific times requested by the Customer during the term of this Agreement.
- 5.4. Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Goods and of satisfying the Customer's expectations of those Goods/Services.
- 5.5. In the discharge of its duties, the Supplier shall comply with all reasonable directions of the Customer as to the nature and scope of the Goods/Services to be provided.
- 5.6. Nothing in the above clause shall effect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this

Agreement.

- 5.7. The Supplier may agree to provide, on request from the Customer, additional Goods/Services not included or specifically excluded in the Quotation/Order. In this event, the Supplier shall be entitled to make an additional charge. Additional Goods/Services includes, but is not limited to, alterations, amendments, and any additional visits by the Supplier after provision of the Goods/Services at the request of the Customer.

**6. DISHONOUR OF CHEQUE**

- 6.1. If any cheque issued by the Customer or by any third party in payment of the Price is dishonoured:
  - 6.1.1. The Supplier may refuse to supply any further Goods and/or Services until satisfactory payment is received in full, including bank fees and charges;
  - 6.1.2. The Supplier is entitled to treat the dishonour of the Customer's cheque as a repudiation of this Agreement and to elect between terminating this Agreement or affirming this Agreement, and in each case claiming and recovering compensation for loss or damage suffered from the Customer.
  - 6.1.3. The Customer may be liable for a dishonoured cheque fee of \$40.00.

**7. PAYMENT AND DEFAULT**

- 7.1. Invoices issued by the Supplier shall be due and payable within fourteen (14) days from the date of the invoice ("Default Date").
- 7.2. If the Supplier does not receive the Outstanding Balance for the Price on or before the Default Date, the Supplier may, without prejudice to any other remedy it may have, forward the Customer's outstanding account to a debt collection agency for further action. The Customer acknowledges and agrees that:
  - 7.2.1. After the Default Date, the Outstanding Balance shall include, but not limited to, all applicable fees and charges under this Agreement;
  - 7.2.2. The Supplier may, at its discretion, charge a monthly account keeping fee of \$11.00 inc GST.
  - 7.2.3. The Supplier may, at its discretion, charge interest at the prevailing Victorian Penalty Interest rate.
  - 7.2.4. In the event of the Customer being in default of their obligation to pay and the overdue account is then referred to a debt collection agency, and/or law firm for collection the Customer shall be liable for the recovery costs incurred and if the agency charges commission on a contingency basis the Customer shall be liable to pay as a liquidated debt, the commission payable by the Supplier to the agency, fixed at the rate charged by the agency from time to time as if the agency has achieved one hundred per cent recovery and the following formula shall apply:  
$$\text{Original Debt} \times 100$$
  
Commission = 100 - Commission % charged by agency (inc GST)
- 7.2.5. In the event an agency is required for debt recovery the Customer is to pay all fees applicable and/or commission rate for the amount unpaid as deemed by the agency.
- 7.2.6. In the event where the Supplier or the Supplier's agency refers the overdue account to a lawyer the Customer shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis.

**8. RISK AND LIABILITY**

- 8.1. The Supplier relies upon the integrity of the information supplied by the Customer. The Customer will ensure when placing Orders that there is sufficient information to enable the Supplier to execute the Order and that the Supplier is made aware of any special requirements pertaining to the Order.
- 8.2. The Supplier takes no responsibility if the specifications provided by the Customer are wrong, inaccurate or insufficient, and the Customer will be liable in that event for:
  - 8.2.1. Any expenses incurred by the Supplier to rectify the Order; and
  - 8.2.2. Any Indirect, Special or Consequential loss resulting in the Goods and/or Services being faulty or unfit for purpose as a consequence of the information provided by the Customer.
- 8.3. The Supplier takes no responsibility for representations made in relation to the Goods and/or Services or any delay in the delivery of the Goods made by a third party/third party manufacturer which was or is beyond the Supplier's reasonable control.
- 8.4. The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from any indirect, special or consequential loss incurred as a result of delay or failure to provide the Goods and/or services or to observe any of these conditions due to an event of force majeure for any cause or circumstance beyond the Supplier's reasonable control.
- 8.5. The Supplier does not represent that it will provide and/or deliver any Goods/Services unless it is included in the Quote.
- 8.6. Subject to Clauses 9.1 and 9.2, the Customer accepts risk in relation to the Goods when the Goods pass to his care and/or control.

**9. WARRANTY**

- 9.1. The Supplier warrants that the rights and remedies to the Customer in this Agreement for warranty against defects are in addition to other rights and remedies of the Customer under any applicable Law in relation to the goods and services to which the warranty relates.
- 9.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia  
**Warranty for Services**
- 9.3. The Supplier warrants that if any defect in any Service provided by the Supplier becomes apparent and is reported to the Supplier preferably within thirty (30) days, the Supplier will remedy the defective Service.
- 9.4. If any Services provided by the Supplier are repaired, altered or overhauled by the Customer or caused to be repaired, altered or overhauled by the Customer without the Supplier's consent, the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty.
- 9.5. To the extent permitted by law, the Supplier's liability in respect of defective services will be limited to:
  - 9.5.1. The re-supply of the Service; or
  - 9.5.2. The payment of the cost of having the Services supplied again; or

- 9.5.3. The refund of the Price paid by the Customer in respect of the Service.
- 9.6. In respect of all claims the Supplier shall not be liable to compensate the Customer for any reasonable delay in remedying the defective Services or in assessing the Customer's claim. The Customer warrants that it will use its best endeavours to assist the Supplier with identifying the nature of the defective Service claim.

**Warranty for Goods**

- 9.7. The warranty for Goods supplied shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer. The Supplier will use its best endeavours to assist the Customer with any claim with respect of the Goods.
- 9.8. For Goods supplied and/or manufactured by the Supplier, the Supplier warrants:
  - 9.8.1. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods or services repaired or replace if the goods or services fail to be of acceptable quality and the failure does not amount to a major failure.
  - 9.9. If the Goods and Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for a consumer guarantee under the Australian Consumer Law in relation to those Goods and Services is limited to, at the discretion of the Supplier:
    - 9.9.1. The resupply of the Goods and Services;
    - 9.9.2. The payment of the cost of providing the Goods and Services again.**Claims made under Warranty**
  - 9.10. Subject to clauses 10.1 and 10.2, claims for warranty should be made in one of the following ways:
    - 9.10.1. The Customer must send the claim in writing together with proof of purchase to the Supplier's business address stated in clause 2.1;
    - 9.10.2. The Customer must email the claim together with the proof of purchase to the Supplier on [admin@bawbawrac.com.au](mailto:admin@bawbawrac.com.au).
    - 9.10.3. The Customer must contact the Supplier on the Supplier's business number (03) 5623 1315.

**10. TERMINATION AND CANCELLATION**

**Cancellation by Supplier**

- 10.1. The Supplier may cancel any Order to which these Terms and Conditions apply or cancel delivery of Goods at any time before payment is made by the Customer by giving written notice to the Customer. The Supplier shall not be liable for any indirect, special or consequential loss whatsoever arising from such cancellation.
- 10.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
  - 10.2.1. Any money payable to the Supplier becomes overdue; or
  - 10.2.2. The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- 10.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.  
**Cancellation by Customer**
- 10.3. Subject to Clauses 9.1 and 9.2, any Order cannot be cancelled by the Customer unless expressly agreed to by the Supplier in writing.
- 10.4. In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.
- 10.5. If the Customer places an Order with the Supplier and the Supplier places an Order with a third party Supplier to meet the Customer's request, the Customer shall be liable for the Price of the Goods ordered if the Customer cancels the Order and the Goods have already been dispatched.

**11. SET-OFF**

- 11.1. The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.
- 11.2. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

**12. INSURANCE**

- 12.1. The Supplier is not liable to provide any insurance cover in relation to the provision of the Goods and Services. The Customer is responsible to effect whatever insurance cover he/she requires at its own expense.

**13. PRIVACY ACT 1988**

- 13.1. The Customer and/or any Guarantor (if applicable) agrees;
  - 13.1.1. For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.
  - 13.1.2. That the Supplier may exchange information about the Customer and the Guarantor/s 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.
  - 13.1.3. The Customer consent to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).

**14. ENTIRE AGREEMENT**

- 14.1. These Terms and Conditions as defined in Clause 2.1 constitute the whole Agreement made between the Customer and the Supplier.
- 14.2. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by it or on its behalf that are in conflict with any clauses in this document in any way.

I/We understand and agree to be bound by the Terms and Conditions set out herein.