

STANDARD TERMS AND CONDITIONS OF SALE FOR SUPPLY OF GOODS OR SERVICES

1. DEFINITIONS

In these Conditions, unless the contrary intention appears: "Agreement" means the agreement formed pursuant to clause 3 below. It includes the Quotation, the Purchase Order, the acceptance by G J Walker Air Handling Systems Pty Ltd ("GJW") of the Purchase Order, these Terms and Conditions and any Special Conditions; "Change in Law" means any change in regulation or legislation enacted by any government authority or delegated government authority; "Conditions" means these Terms and Conditions of Sale and any Special Conditions agreed in writing by GJW; "Exchange Rate" means the then current exchange rate for exchanges between those currencies required to be converted by GJW as quoted in The Australian Financial Review on the date of the conversion by GJW. "Goods" means all or any part of the Goods the subject of a Purchase Order and includes Goods supplied as part of an Agreement for the supply of Services; "Intellectual Property" means all trademarks, patents, registered designs, copyright, logos, designs, drawings and software; "Price" means the price of the Goods as agreed by the Purchaser and GJW at the time the Agreement is formed pursuant to clause 3 below. The Price shall be set pursuant to clause 6 below; "Purchase Order" means an offer by the Purchaser for the purchase of Goods or Services in accordance with any Quotation issued by GJW, and includes any specifications or drawings attached or referred to in any such Purchase Order but does not include and no regard shall be had to any wording or reference to the Purchaser's terms and conditions on such Purchase Order. Any Purchase Order is to be read as though any wording which references the Purchaser's terms and conditions is deleted; "Purchaser" means the Purchaser on the Purchase Order (and includes any successors or assigns); "Quotation" means any quotation issued by GJW to a Purchaser for the supply of the Goods and/or Services stipulated in Australian dollars including the specifications for the Goods and / or Services; " Services" means all or any part of the services to be provided by GJW pursuant to the Agreement; and "Special Conditions" means the special conditions referred to in clause 3 below.

2. APPLICATION OF THESE TERMS AND CONDITIONS

These Conditions apply to all Agreements entered into by GJW and Purchaser except as varied in writing by GJW.

3. QUOTATION AND FORMATION OF AGREEMENT

- a. Quotations are an invitation to treat only and, subject to price variation pursuant to clause 6 below, are valid for 30 days from the Quotation date or as varied in writing by GJW prior to the formation of an Agreement.
- b. As The Agreement is formed by GJW's acceptance of a Purchase Order submitted within the valid time frame of the Quotation. Any Agreement is subject to these Conditions, the Quotation and any Special Conditions. These Conditions will override any conditions contained in the Purchase Order. A Purchase Order that has been accepted by GJW cannot be cancelled by the Purchaser without obtaining the prior written approval of GJW, which it may refuse in its absolute discretion.

4. COMPONENTS

- a. If Goods require components and a specific brand is not requested by the Purchaser in the Purchase Order, GJW in its sole and absolute discretion may use alternate components.
- b. In the event the Purchase Order specifies a specific brand of components and GJW has accepted the Agreement on this basis, the Purchaser agrees that any delay in obtaining the specified component will result in corresponding extension of time for GJW to provide the Goods or Services.

- c. GJW reserves the right to make reasonable modifications of any kind to the Goods without prior notice to the Purchaser.

5. INTELLECTUAL PROPERTY RIGHTS

- a. GJW will protect and indemnify the Purchaser from and against all claims, damages, judgments and losses arising from any of infringements or alleged infringements by GJW of any Intellectual Property rights relating to any of the Goods delivered or provided under the Agreement, provided that no monies are owing by the Purchaser to GJW, the Purchaser provides written notification of any such claims to allow GJW sufficient time to conduct any litigation, and cooperates with GJW in the conduct of any litigation. Where the Purchaser fails to provide such notice or cooperation, the indemnity will not apply.
- b. Property, right and title in all Intellectual Property relating to the Goods remains with GJW. The Purchaser will be entitled to a non-exclusive, non-transferable license of the Intellectual Property to the extent it is required for the proper use and performance of the Goods.
- c. All Intellectual Property created during the course of the supply of the Goods or as a result of work done in connection with the supply of the Goods will be the property of GJW. The Purchaser will execute all documents evidencing ownership of the Intellectual Property as GJW may reasonably require.

6. PRICE

- a. Subject to clause 6(b), the Price will be fixed from the date of formation of the Agreement.
- b. If there is a Change in Law since the formation of this Agreement which causes GJW to incur additional cost for the supply of the Goods and Services, GJW may adjust the Price to reflect the change in cost, using reasonable endeavors to minimize any increase.

7. GOODS AND SERVICES TAX

In this clause:

- a. "GST" refers to goods and services tax under A New Tax System (Goods and Services) Act 1999 ("GST Act") and the terms used have the meanings as defined in the GST Act.
- b. The Price, and all other amounts agreed to be paid by the Purchaser to GJW, is exclusive of GST.
- c. In respect of any liability of GJW for GST under this Agreement, and any variation for any taxable supplies, the Purchaser will pay to GJW, at the same time as any payment is made involving GJW in GST liability, the additional amount of GST, together with the payment to which it relates.
- d. The Purchaser's liability under this clause is to reimburse the full amount of GST, disregarding and excluding GJW's entitlement to input tax credits or other credit or reimbursements for GST.
- e. In respect of each payment by the Purchaser under this Agreement, GJW agrees to deliver to the Purchaser tax invoices in a form which complies with the GST Act and the applicable regulations.

8. SUPPLY OF INFORMATION

- a. The Purchaser warrants the accuracy of all information provided by it to GJW, and GJW will not be responsible for any loss, damage or delay in the event that the Purchaser's information is incorrect in any respect.
- b. Any additional costs incurred by GJW due to incorrect information or delay in supply of information by the Purchaser, including storage and transport costs, will be payable by the Purchaser to GJW in addition to the Price. Any such delays will result in a corresponding extension of time for GJW to supply the Goods.
- c. All plans, drawings, dimensions and quantities submitted by GJW with any Quotation are approximate, for Quotation purposes only and must not be used for construction purposes. The Purchaser must check all plans, drawings, dimensions, quantities and other specifications ("the Drawings") submitted by GJW prior to manufacture and / or installation of any Goods. GJW will not be responsible for any loss, damage or delay due to the Purchaser's failure to check the Drawings provided by GJW.

- d. Unless expressly agreed to by GJW, GJW is not responsible or liable for the adequacy or correctness of any third party design.

9. DELIVERY OF THE GOODS

- a. Delivery dates are estimates only unless GJW expressly agrees to time being of the essence and the specified delivery date.
- b. If GJW has agreed to the delivery date, GJW is not responsible for any costs of delay out of its control, and in no case will GJW be liable for costs of delay, general damages at law for delay or liquidated damages for delay.
- c. The Purchaser may only reschedule the delivery date if agreed to by GJW prior to the change. Any additional costs, expenses, overheads or losses of GJW as a result of any change in delivery date (including storage) will be at the Purchaser's cost and paid in addition to the Price. However, payment for the Goods is still due on the original due date regardless of the amended delivery date and when delivery actually occurs, and the Purchaser will not be excused from payment due to the Purchaser's request to delay delivery. If GJW is not paid on the original payment date, the Purchaser shall be liable for interest on the unpaid amount at the rate of 5% above the Commonwealth Bank overdraft rate.
- d. The Price is for Goods delivered free on truck (FCA pursuant to Incoterms 2010) from the nominated port or point of dispatch unless otherwise agreed by GJW in writing at the time of entering into the Agreement. The Goods will be deemed delivered once loaded onto the Purchaser's nominated carrier or, where GJW agrees, upon delivery at the nominated address of the Purchaser.
- e. All deliveries shall occur during normal working hours unless otherwise agreed by GJW. Any additional costs for delivery outside normal working hours will be at the cost of the Purchaser.
- f. The Purchaser must inspect the Goods on delivery, and report in writing any damage to the Goods or shortage in delivery to GJW within three (3) working days of delivery. Unless GJW receives such written notification within this time, the Goods will be deemed delivered and accepted in all respects in accordance with the Agreement, free from damage and shortage. Failure to comply with this clause will be a bar to any claim against GJW.

10. FORCE MAJEURE

- a. Should GJW be prevented from delivering any of the Goods or Services to the Purchaser in accordance with the Agreement by reason of any event beyond GJW's control, including but not limited to industrial disputes, an intervention during shipping, acts of parliament, embargo, litigation, Court Orders, civil strife, fires, floods, acts of God and GJW's inability to procure materials or components from its usual sources of supply, GJW will be entitled at its own option:
 - i. to delay delivery of the Goods and/or Services; or
 - ii. to terminate the Agreement.
- b. The Purchaser will not be entitled to recover any damage or loss as a result of such delay or termination.

11. ACCESS AND EQUIPMENT FOR DELIVERY OF GOODS

- a. For delivery and/or installation of the Goods, the Purchaser will provide GJW with adequate and safe entry, access, equipment and services ("Access") at and to the Purchaser's premises.
- b. It is the responsibility of the Purchaser to obtain the necessary permits for safe access at their cost.
- c. GJW will not be liable for any loss or damage arising out of any failure or delay in providing Access necessary for supply and delivery of the Goods. Any additional costs incurred by GJW arising from or related to any issue with Access will be borne by the Purchaser.
- d. Any delays arising under this clause will result in a corresponding extension of time for GJW to deliver the Goods or Services.

12. PASSING OF RISK

Except where GJW is storing the Goods on behalf of the Purchaser, GJW will bear all risks for the Goods until the earlier of delivery to the Purchaser's address or collection by the Purchaser from GJW's premises. The Purchaser will bear all risk for the Goods where GJW stores the Goods on behalf of the Purchaser.

13. TESTS

- a. The cost of any tests required by the Purchaser to determine the performance of the Goods will be borne by the Purchaser.
- b. If witness testing is required under the Agreement, the Purchaser will attend to such testing within 2 working days from the date of notification of commissioning of the Goods, failing which an invoice will be issued for the Goods and payment will be required in accordance with these Conditions.

14. WARRANTY

- a. The following statement only applies to a consumer sale of Goods or Services as defined in the Australian Consumer Law: "GJW's 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 for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure."
- b. Where the Australian Consumer Law does not apply to the sale of Goods or Services under this Agreement or to the extent permitted by law (unless otherwise expressly agreed in writing by GJW), GJW does not warrant:
 - i. The Goods or Services are fit for purpose;
 - ii. The appropriateness of the Goods for the Site.
- c. In relation to Goods supplied by GJW, and unless expressly stated in writing by GJW, GJW warrants that for a period of 12 months from the date of shipment from factory or 12 months after the Goods are commissioned (whichever occurs first) ("Warranty Period"), the Goods will be free from defective materials and workmanship under normal use and service. If commissioning is delayed then the Purchaser may purchase from GJW delayed commencement warranty.
- d. Unless expressly stated in writing by GJW, where the Goods are supplied and installed more than 50km outside the metropolitan area of each capital city, the warranty excludes the cost of accommodation and travel expenses to Site.
- e. Where the Agreement does not provide for the installation of the Goods by GJW, this warranty will not apply in respect of Goods installed improperly or with comprised access, in a dangerous or unsafe manner, not in accordance with any applicable building codes, standards or any other applicable industry codes or standards, or contrary to GJW or the manufacturer's instructions regarding installation and operation of the Goods whether verbal or written.
- f. To the extent permitted by law, Goods may not be returned except with the written consent of GJW, and when Goods are returned all monies payable to GJW will remain due and payable.
- g. This warranty will not apply and GJW will not be liable for any loss or damage where:
 - i. The Goods are subjected from the date of delivery to incorrect usage, incorrect operational design applications (except where GJW has designed the specifications for the use and/or operation of the Goods), abuse, neglect, or damage by fire, flood, abrasion, erosion, corrosion, or deterioration or the like due to changes in temperature, exposure to foreign matter, chemicals, energy, water, steam or other similar cause or failure to comply with any instruction or manual for the Goods ("Abuse").
 - ii. Any third party components are fitted to the Goods and have caused any faults;
 - iii. insufficient maintenance services occurred on the Goods during the warranty period;
 - iv. Work or materials are supplied in relation to the Goods other than by a person authorised in writing by GJW;

- v. The Purchaser fails to notify GJW of any defects within a reasonable time after those defects are first noticed by the Purchaser;
 - vi. The Purchaser resets faults in the Goods without first notifying GJW or receiving advice or an inspection from GJW;
 - vii. The Goods require replacement of refrigerant loss caused by defects in the Goods except in packaged liquid chillers and complete refrigerant systems (such as self-contained packaged air conditioning units) or where specifically agreed in writing by GJW.
- h. Any replacement part supplied by GJW pursuant to a valid warranty claim shall be covered by a further warranty period for the unexpired portion of the Warranty Period in respect of the Goods or for a period of 90 days, whichever period expires last. The cost of labor for fitting of replacement parts under a further warranty will be at the expense of the Purchaser.
 - i. Where GJW investigates any purported or actual defect and/or attends to rectification of defects under warranty and GJW later determines that the defects are not covered under the warranty, then the Purchaser will pay to GJW within 30 days of demand the cost of such services and materials. This cost will be determined by GJW at its sole discretion.
 - j. Any implied warranties that can be excluded by law are excluded under this Agreement. Nothing in this clause will exclude, restrict or modify any condition, warranty, right or liability implied by law where to do so would render this clause void.

15. LIMITATION OF LIABILITY

- a. The liability of GJW in respect of a breach of a consumer guarantee or any warranty relating to the Goods is limited, to the extent permitted by law and at the option of GJW to:
 - i. in the case of supply of Goods;
 - 1. replacing the Goods or the supply of equivalent products;
 - 2. the repair of the Goods;
 - 3. the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - 4. the payment of the cost of having the Goods repaired.
 - ii. in the case of supply of Services;
 - 1. the supplying of the Services again; or
 - 2. the payment of the cost of having the Services supplied again.
- b. Where the Australian Consumer Law does not apply to the sale of Goods and Services under this Agreement, in relation to any breach of contract, breach of warranty, claim under statute or tort or by way of indemnity, GJW's liability is limited to 10% of the Price.
- c. GJW is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Purchaser for:
 - i. any increased costs or expenses;
 - ii. any loss of profit, revenue, business, contracts or anticipated savings;
 - iii. any loss or expense resulting from a claim by a third party; or
 - iv. any special, indirect or consequential loss or damage of any nature whatsoever.
- d. GJW will not be liable to the Purchaser for any loss or damage suffered or incurred by the Purchaser arising from the Purchaser's acts or omission (or its servants, agents, employees, tenants and guests).
- e. GJW will not be liable for liquidated damages or any damages for delay unless expressly agreed to in writing by GJW.

16. INDEMNITY

The Purchaser will indemnify and keep indemnified GJW and its successors and assigns from and against any claim, liability, loss or damage GJW may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with this Agreement by the Purchaser or its representatives.

17. NOISE AND VIBRATION

Any information provided by GJW concerning noise and vibration is given for the assistance of the Purchaser but the Purchaser may not rely upon such information nor upon the skill or judgment of GJW in respect of such information. GJW will not be responsible for noise and/or vibration except where agreed to in writing by GJW.

18. TERMS OF PAYMENT

- a. Subject to prior credit approval of the Purchaser prior to delivery of the Goods, payment will be made by the Purchaser within 30 days of invoice by GJW;
- b. Where any monies due and payable by the Purchaser to GJW remain outstanding:
 - i. such amount will be subject to an interest rate of 5% above the Commonwealth Bank overdraft rate per annum until payment;
 - ii. the charging or payment of interest will be without prejudice to all other rights and remedies GJW may have to recover any amount due pursuant to the Agreement.
- c. Should the Purchaser fail to take delivery of the Goods within 2 days of notification of readiness of delivery by GJW, GJW reserves the right to:
 - i. arrange storage of the Goods and recover the costs together with additional payments from the Purchaser; and
 - ii. obtain payment for the Goods as though the Goods had been delivered in accordance with the Agreement.
- d. Where any monies due and payable by the Purchaser to GJW remain outstanding, or if the Purchaser is in breach of the Agreement, GJW may suspend performance of this Agreement, until full payment is made or the breach is rectified. In the event the breach is not rectified within 30 days, GJW may terminate the Agreement, in which case clause 22 will apply. GJW will in no way be liable for any loss or damage of any kind arising from any such suspension or termination.
- e. If GJW terminates the Agreement or takes possession of the Goods pursuant to the Agreement, GJW may resell the Goods or the undelivered balance.
- f. To the full extent permitted by law, the obligations of GJW to warrant the Goods pursuant to clause 14 will be suspended to the extent any monies owing to GJW remain outstanding. The warranty period provided by clause 14 will remain unchanged notwithstanding that pursuant to this clause 18(f) the warranty has not applied for part of that period.
- g. The Purchaser will not be entitled to deduct or withhold from any invoice any moneys by way of retention, set off, counter claim, or otherwise.
- h. All invoices issued by GJW will be issued under the relevant securities of payment legislation applicable to each State or Territory.

19. RETENTION OF TITLE

- a. Risk passes to the Purchaser upon delivery but property and title in the Goods remains with GJW until full payment for the Goods is received.
- b. Until the Goods have been paid in full the Purchaser must:
 - i. hold the Goods as a bailee, storing them separately from other goods showing they are the property of GJW (including by not removing any serial numbers or identification of GJW's);
 - ii. take out and maintain comprehensive insurance of the Goods against any loss or damage to the Goods;
 - iii. only sell the Goods in its ordinary course of business by a bona fide sale at full market value, in its own name, and not as the agent of GJW;
 - iv. maintain a separate account holding the payment for the Goods in trust and account to GJW for the proceeds; and
 - v. provide GJW access to any premises to inspect the Goods upon demand.

- c. In the event this Agreement is terminated, and without notice to the Purchaser, GJW may elect (at its discretion) not to continue performance of the Agreement or may enter upon any premises at which the Goods are or may be stored and repossess them.
- d. Where Goods delivered by GJW to the Purchaser are used either in the manufacture or construction of new goods or are otherwise mixed with other objects to create new goods ("New Goods"), then GJW shall be entitled to enter any premises at which the New Goods are stored and recover from those premises the Goods or the New Goods.
- e. The Purchaser will indemnify and keep indemnified GJW from any costs of removal, claims, suits and causes of action of any kind from any person or entity in respect of such entry and the removal of the Goods or New Goods.
- f. The affixing of Goods or New Goods to any part of any building in any manner whatsoever will not have the effect of making the Goods a fixture of the building.
- g. The Purchaser must not assign any book debt representing the amount due and payable by any third party to the Purchaser for the Goods until the Purchaser's liability to GJW under the Agreement has been discharged.

20. PPSA

- a. Defined terms in this clause have the same meaning as given to them in the Personal Properties Securities Act 2009 ("PPSA").
- b. The Purchaser acknowledges that these Conditions constitute a Security Agreement and give rise to a Purchase Money Security Interest ("PMSI") in favour of GJW as Secured Party over the Goods supplied or to be supplied to the Purchaser as Grantor pursuant to these Conditions.
- c. The Parties acknowledge that GJW is entitled to register its interest in the Goods supplied or to be supplied to the Grantor under these Conditions on the PPSA Register as Collateral.
- d. The Purchaser waives its right to receive notification of any such registration by GJW.

21. TERMINATION

If:

- a. the Purchaser fails to pay any monies due and payable pursuant to the Agreement; or
- b. the Purchaser breaches, repudiates or terminates the Agreement; or
- c. winding up proceedings are commenced against the Purchaser; or
- d. a Liquidator, Administrator, Receiver, Manager or Controller (as defined by the Corporations Act 2001) is appointed to the Purchaser or any part of its assets; or
- e. the Purchaser commits an act of bankruptcy (as defined by the Bankruptcy Act 1966); or
- f. GJW has a reasonable belief that the Purchaser is insolvent or a party may attempt to levy any form of execution against the Goods; or
- g. the Purchaser suspends, or threatens to suspend, the conduct of its business; or
- h. the Purchaser becomes unable to pay its debts as and when they fall due;

then GJW may terminate the Agreement, in which case clause 22 will apply.

22. TERMINATION AND CANCELLATION

In the event that the Purchaser purports to terminate and/or repudiate or cancel the Agreement, or if GJW terminates the Agreement pursuant to the Agreement, then, without prejudice to its other rights and remedies, GJW may recover from the Purchaser all costs and expenses incurred by GJW in its performance of the Agreement, and all loss and damages arising from or related to the termination or repudiation including but not limited to the cost of any Goods ordered but not delivered (which cannot be cancelled).

23. CHOICE OF LAW

The Agreement will be governed and construed according to the laws of Victoria.

24. DISPUTE RESOLUTION

Any dispute that cannot be resolved between the parties will be referred to an expert for determination. The nominated expert will be appointed by agreement between the parties, or in the absence of agreement by appointment of the President the Institute of Arbitrators & Mediators Australia. The parties agree that any expert determination will be binding. The Purchaser will indemnify GJW for all costs (on an indemnity basis) in the event that the expert determines that GJW was not at fault and/or the Goods were not under warranty.

25. NOTICES

Notices shall be delivered or posted to GJW at its head office in Victoria and to the Purchaser at its last known address.

26. GENERAL PROVISIONS

- a. No consent or waiver, express or implied, of any breach by the Purchaser of the Agreement will be construed as a consent to or waiver of any other breach of the Agreement.
- b. If any clause or provision of the Agreement is invalid, void or unenforceable, all other provisions which are capable of separate enforcement are and will continue to be of full force and effect in accordance with their terms.
- c. The Quotation, Purchase Order and these Conditions constitute the entire Agreement between the Parties and all prior agreements and representations, save those expressly incorporated by the Agreement, and all local, general or trade customs, are hereby excluded.
- d. Unless otherwise agreed in writing by a director of GJW these Conditions prevail over any other terms and conditions of sale sought to be imposed by the Purchaser, to the full extent permitted by law.

27. CONFIDENTIAL INFORMATION

To the extent requested by either GJW and/or the Purchaser, each party will take steps to maintain confidentiality of any information provided in relation to this Agreement and will ensure all confidential information is appropriately collected, stored, used, disclosed, transferred and destroyed (upon request).

28. EXPRESS ACCEPTANCE OF CONTRACT TERMS

The parties agree that the quotation for the Goods, any acceptance of that quotation and any equipment supplied or work carried out pursuant to or ancillary to this Agreement are expressly on the terms of this Agreement and no other purported terms shall take precedence over these terms, whether they are sent to or received by GJW by any medium, brought to GJW's attention, referenced at the end of any purchase order of the Purchaser or otherwise available on the Purchaser's internet. The Purchaser specifically acknowledges that GJW has relied on the Purchaser's representation that the terms of this Agreement govern the entire contract between the parties in providing the Quotation and carrying out any work under this Agreement. This clause cannot be varied other than in writing by the parties and this clause may be pleaded as a bar to any claim that other terms apply.

PROCESS FOR CLAIMING UNDER WARRANTY WHERE THE AUSTRALIAN CONSUMER LAW APPLIES

Warranty Claims for Goods

Step	Process	Time-Frame
(1)	Purchaser notify GJW	Within 18 months from date of shipment from factory or 12 months from date of commissioning -whichever is the earlier
(2)	Advise of Warranty issue provide: 1. model and serial number of Goods; 2. site details; 3. customer contact	
(3)	GJW may arrange someone to attend the site and inspect the Goods, identify whether it is valid warranty claim and if so , effect repairs or replace the Goods pursuant to warranty provisions	
(4)	Where the Goods are located more than 50km from the metropolitan city centre of a capital city, the Purchaser will bear the cost of any travel and accommodation to investigate and undertake repairs or replacement under a valid warranty claim	
(5)	The Purchaser will bear all the cost of any travel , investigations, cost of repairs and/or replacement where not deemed a valid warranty claim	