

## Terms & Conditions of Cav Air Services

Standard Terms and Conditions for Cav Air Services Pty Ltd ACN 602 477 305 ("Cav Air Services")

### 1. Definitions

- 1.1 "Cav Air Services" shall mean Pty Ltd ACN 602 477 305, its successors and assigns or any person acting on behalf of and with the authority of Cav Air Services.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Cav Air Services to the Client.
- 1.3 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by Cav Air Services to the Client (and where the context so permits shall include any supply of Services as described below) and are as described on the invoices, quotations, work authorisation or any other forms as provided by Cav Air Services to the Client.
- 1.5 "Services" shall mean all Services supplied by Cav Air Services to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as described above).
- 1.6 "Price" shall mean the Price payable for the Goods and Services as described in Clause 4.3.

### 2. Incorporation

- 2.1 These Terms and Conditions govern every contract for the sale of Goods and/or the provision of Services by Cav Air Services to the Customer, agreed between them, to the exclusion of all other terms and conditions.
- 2.2 No modification to these Terms and Conditions, whether put forward in the Customer's purchase order or otherwise shall bind Cav Air Services unless agreed to in writing by its authorised employee.
- 2.3 These Conditions supersede any Terms and Conditions which have previously governed contracts for the sale of Goods and Services by Cav Air Services to the Customer.

### 3. Acceptance

- 3.1 Any instruction received by Cav Air Services from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by Cav Air Services shall constitute acceptance of the Terms and Conditions herein.
- 3.2 Upon acceptance of these Terms and Conditions by the Client the Terms and Conditions are binding and can only be amended with the written consent of Cav Air Services.
- 3.3 The Client shall give Cav Air Services not less than 14 (fourteen) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to their telephone number or address. The Client shall be liable for any loss incurred by Cav Air Services as a result of the Client's failure to comply with this Clause.
- 3.4 Cav Air Services reserves the rights to make, without notice, such minor modifications in specifications, designs or material as it may at its discretion deem necessary or desirable.

### 4. Price & Payment

- 4.1 Any quotation given by Cav Air Services is a mere invitation to treat and does not constitute a contractual offer. All quotations hold for 30 (thirty) days after issue, however Cav Air Services may withdraw a quotation at any time.
- 4.2 Prices included in the quotation are based on the specification, drawings and/or requests by the Customer. Should the specification or Customer's request change, then Cav Air Services reserves the right to vary the quotation price.
- 4.3 At Cav Air Services sole discretion the Price shall be either:
- as indicated on invoices provided by Cav Air Services to the Client in respect of Goods and/or Services supplied; or
  - Cav Air Services's quotes price which shall be binding upon Cav Air Services provided that the Client shall accept Cav Air Services's quotation in writing within 30 (thirty) days.
- 4.4 Cav Air Services reserves the right to change the Price in the event of a variation to Cav Air Services quotation. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of additional work required due to unforeseeable circumstances or as a result of increases to Cav Air Services to the cost of materials and labour) will be charged for on the basis of Cav Air Services quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.5 At Cav Air Services' sole discretion, the terms of payment to Cav Air Services are as follows:
- a non-refundable 10% deposit is required on acceptance of the Quotation;
  - for the supply and installation of air conditioning units payment is strictly COD unless otherwise agreed to a maximum of net 30 (thirty) days from the date of invoice;
  - for the provision of service payment is strictly COD unless otherwise agreed to a maximum of net 30 (thirty) days from the date of invoice;
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

### 5. Default and Consequences of Default

- 5.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of twelve percent (12%) per annum compounding monthly.
- 5.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Cav Air Services.
- 5.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Cav Air Services from and against all costs and disbursements incurred by Cav Air Services in pursuing the debt including legal costs on a solicitor and own client basis and Cav Air Services collection agency costs.
- 5.4 Without prejudice to any other remedies Cav Air Services may have, if at any time the Client is in breach of any obligation (including those relating to payment) Cav Air Services may suspend or terminate the supply of Goods and Services to the Client and any of its other obligations under the Terms and Conditions. Cav Air Services will not be liable to the Client for any loss or damage the Client suffers because Cav Air Services has exercised its rights under this clause.
- 5.5 Without prejudice to Cav Air Services other remedies at law Cav Air Services shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Cav Air Services shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to Cav Air Services becomes overdue, or in Cav Air Services opinion the Client will be unable to meet its payments as they fall due; or
  - the Client 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
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 6. Delivery

- 6.1 The times quoted for delivery are estimates only and Cav Air Services accepts no liability for failure or delay in delivery of Goods. The Client is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by Installments at the discretion of Cav Air Services.
- 6.2 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Cav Air Services shall be entitled to charge a reasonable fee for the storage and/or redelivery of the Goods.
- 6.3 The failure of Cav Air Services to deliver shall not entitle either party to treat this contract as repudiated.
- 6.4 Cav Air Services shall not be liable for any loss or damage whatsoever due to failure by Cav Air Services to deliver the Goods (or any of them) promptly or at all, where the failure is due to circumstances beyond the control of Cav Air Services.

### 7. Risk

- 7.1 Irrespective of whether Cav Air Services retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Cav Air Services is entitled to receive all insurance proceeds in respect of the Goods. The production of these terms and conditions by Cav Air Services will be sufficient evidence of Cav Air Services rights to receive the insurance proceeds without the need for any insurer or other third party acting on behalf of the insurer to make further enquiries.
- 7.3 Where the Client expressly requests Cav Air Services to deliver the Goods to an unattended location then such arrangement shall be at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are adequately insured or at all.

### 8. Title

- 8.1 Cav Air Services and the Client agree that title to the Goods shall not pass until:
- the Client has paid Cav Air Services all amounts owing for the particular Goods and the cost of installation; and
  - the Client has met all other obligations due by the Client to Cav Air Services in respect of all contracts between Cav Air Services and the Client.
- 8.2 Receipt by Cav Air Services 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 and until then Cav Air Services' ownership or rights in respect of the Goods shall continue.
- 8.3 It is further agreed that:
- where practicable the Goods shall be kept separate and in manner that makes them readily identifiable as Cav Air Services Goods until Cav Air Services shall have received payment and all other obligations of the Client have been met; and
  - until such time as title to the Goods shall pass from Cav Air Services to the Client Cav Air Services may give notice in writing to the Client to return the Goods or any of them to Cav Air Services. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
  - Cav Air Services shall have the right of stopping the Goods in transit whether or not delivery has been made; and
  - if the Client fails to return the Goods to Cav Air Services then Cav Air Services or their agent may (as the invitee of the Client) enter upon the Premises and take possession of the Goods; and
  - the Client is only a bailee of the Goods and until such time as Cav Air Services has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to Cav Air Services for the Goods, on trust for Cav Air Services; and
  - the Client shall not deal with the money of Cav Air Services in any way which may be adverse to Cav Air Services; and
  - the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Cav Air Services; and
  - Cav Air Services can issue proceedings to recover the Price of the Goods sold notwithstanding that title to the Goods may not have passed to the Client; and
  - until such time that title in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that Cav Air Services will be the owner of the end products.

### 9. Personal Properties and Securities Act 2009 (Cth) ("PPSA")

- 9.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 9.2 Cav Air Services and the Customer acknowledge that these Terms and Conditions constitute a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in favour of Cav Air Services over the Goods supplied or to be supplied to the Customer as Grantor pursuant to these Terms and Conditions.
- 9.3 The Goods supplied or to be supplied under these Terms and Conditions fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms and Conditions.
- 9.4 Cav Air Services and the Customer acknowledge that Cav Air Services, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer, as Grantor, under these Terms and Conditions on the PPSA Register as Collateral.
- 9.5 The Customer waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to Cav Air Services.
- 9.6 The Customer agrees to indemnify Cav Air Services on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
- registration or amendment or discharge of any Financing Statement registered by or on behalf of Cav Air Services; and
  - enforcement or attempted enforcement of any Security Interest granted to Cav Air Services by the Customer.

- 9.7 The Customer agrees:
- a) that, to the extent permitted at law, nothing in sections 130 to 143 of the PPSA will apply to these Terms and Conditions or the Security under these Terms and Conditions;
  - b) to waive its right to do any of the following under the PPSA:
    - i. receive notice of removal of an Accession under section 95;
    - ii. receive notice of an intention to seize Collateral under section 123;
    - iii. receive notice of disposal of Collateral under section 130;
    - iv. receive a Statement of Account if there is no disposal under section 130(4);
    - v. receive notice of retention of Collateral under section 135;
    - vi. redeem the Collateral under section 142;
    - vii. reinstate the Security Agreement under section 143;
    - viii. object to the purchase of the Collateral by the Secured Party under section 129; and
    - ix. receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.

**10. Cav Air Services' Warranty and Claims**

- 10.1 Cav Air Services warrants that if any defect in any workmanship of Cav Air Services becomes apparent and is reported to Cav Air Services within twelve (12) months of the date of delivery (time being of the essence) then Cav Air Services will either (at Cav Air Services sole discretion) replace or remedy the workmanship.
- 10.2 The conditions applicable to the warranty given by clause 10.1 are:
- a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - i. failure on the part of the Client to properly maintain any Goods; or
    - ii. failure on the part of the Client to follow any instructions or guidelines provided by Cav Air Services; or
    - iii. any use of any Goods otherwise than for any application specified on a quote or order form; or
    - iv. the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - v. fair wear and tear, any accident or act of God.
  - b)  the warranty shall be rendered void and of no force or effect if the Goods are repaired, altered or overhauled without Cav Air Services prior written consent.
  - c) in respect of all claims Cav Air Services shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 10.3 All costs of freight and travelling expenses associated with making a claim under this warranty are to be paid by the Client.
- 10.4 The Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Client is entitled to a replacement or refund for a "major failure" and for compensation for any other reasonably foreseeable loss or damage. The Client is 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".
- 10.5 The benefits to you given by Cav Air Services' warranty are in addition to other rights and remedies that you may have under law in relation to the products to which this warranty relates.
- 10.6 If the Client wishes to make a claim under this warranty, it should contact: 0431 510 021.

**11. Warranty**

- 11.1 Warranty on new air conditioning units and new parts are subject to the manufacturer's warranty. However, where permissible by law, the Client must pay for all work undertaken in carrying out a repair if the manufacturer's assessment determines the claim does not fall within the manufacturer's warranty terms.
- 11.2 The Client must provide proof of purchase to make a claim under any warranty.

**12. Indemnity**

- 12.1 To the full extent permitted by law, the Customer will indemnify Cav Air Services and keep Cav Air Services indemnified from and against any liability and any loss or damage Cav Air Services may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms and Conditions by the Customer or its representatives.

**13. Exclusions**

- 13.1 The price agreed herein does not include any expense covering damage arising from hidden or unknown contingencies found at the job site: example - faults or deteriorations of the building structure, pre-existing conditions of the site, heritage or preservation orders, finding of hazardous substances and the like, unless specifically noted in the tender price.

**14. General**

- 14.1 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.
- 14.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 14.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of Sydney, New South Wales.
- 14.4 Cav Air Services 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 Cav Air Services of these terms and conditions.
- 14.5 In the event of any breach of this contract by Cav Air Services the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price.
- 14.6 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 Cav Air Services nor to withhold payment of any invoice because part of that invoice is in dispute or as a result of a defect occurring.
- 14.7 Cav Air Services may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 14.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 14.9 The Client must not assign, or attempt to assign, or otherwise transfer, any right arising out of this agreement without the prior written consent of Cav Air Services.
- 14.10 The failure by Cav Air Services to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Cav Air Services right to subsequently enforce that provision.

I acknowledge I have read and accept the terms and conditions of Cav Air Services

Signature

Date