

TERMS AND CONDITIONS**1. ACCEPTANCE**

- 1.1 These Terms are between Coalfields Climate Control Pty Limited (ABN 89 616 271 277), its successors and assignees (referred to as “we”, “us” or “our”) and you, the person, organisation or entity described in the Quote Form (referred to as “you” or “your”), and collectively the Parties. These Terms apply to all Services provided by us to you. These Terms are also available on our Website.
- 1.2 You have requested the Services set out in the attached Quote Form. You accept the Quote Form and these Terms by either:
- (a) signing and returning the Quote Form;
 - (b) confirming by email that you accept the Quote Form;
 - (c) instructing us to proceed with the Services; or
 - (d) paying any Deposit set out in the Quote Form.
- 1.3 **You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully.** Please contact us if you have any questions using the contact details in the Quote Form. Purchasing Services from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older. You must not order or use the Services if you are under 18 years of age or do not have the consent of a legal guardian who is 18 years or older. If you do not agree to these Terms, you must not use or purchase our Services from us.
- 1.4 We will not commence performing the Services until you have paid the Deposit, if any.

2. SERVICES

- 2.1 In order to start using our Services you must enable us to:
- (a) conduct a Site visit; and
 - (b) permit us to take measurements and record other relevant Site information.
- 2.2 After we have conducted a Site inspection and have taken measurements and recorded other relevant Site information we will prepare a Quotation for the Services.
- 2.3 We agree to perform the Services with due care and skill.
- 2.4 We reserve the right to refuse any request that we deem inappropriate, unreasonable or illegal.
- 2.5 The estimated period for us to perform the Services is set out in the Quote Form.

- 2.6 We may provide the Services to you using our employees, contractors and third party providers, and they are included in these Terms.
- 2.7 Third parties who are not our employees or our direct contractors will be your responsibility. We are not responsible for the products or services provided by those third parties.
- 2.8 If you request a Variation, we have discretion as to whether we accept them and whether an adjustment to the Fee may be required. If we are unable to accommodate the Variation, we may request that we be paid for Services performed to date and terminate these Terms.
- 2.9 If we agree to perform a Variation, we will inform you of any Variation Fee. You must pay the Variation Fee before we commence the Variation. We will invoice you accordingly for the Variation.
- 3. PRICE, INVOICING AND PAYMENT**
- 3.1 You agree to pay us the Price according to the Terms of Payment, as set out in the Quote Form including any Deposit. All amounts are stated in Australian dollars. All amounts include Australian GST (where applicable).
- 3.2 These Terms can only be varied by written agreement executed by both Parties.
- 3.3 If the Terms of Payment include payment by invoice, you agree to pay our invoices by the payment date set out on the invoice. If an invoice is unpaid 5 Business Days after the payment date, we may cease to provide the Services to you until we receive payment.
- 3.4 We may charge interest at the rate of 1% per month, calculated daily, on any amounts unpaid after the payment date.
- 3.5 If invoices are unpaid after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debts, and the right to commence legal proceedings for any outstanding amounts owed to us.
- 3.6 We reserve the right to report bad debts to independent credit data agencies.
- 3.7 If the Quote Form states that the Price is an estimate only, you acknowledge that the final Price may be more or less than the estimated amounts. We will endeavour to inform you of any material variation as it becomes apparent.
- 3.8 Title in Equipment will not pass to you until the later of delivery, or your payment has been processed or otherwise received by us. If your payment is declined for any reason we reserve the right to reclaim the Equipment from your possession, custody or control even if they have been delivered to you or moved from the delivery address. We reserve the right to keep or sell the Equipment. Risk of loss, damage or deterioration to any Equipment will pass to you

once the Equipment is delivered to your address and you should insure for this risk.

3.9 The Parties are aware that we may, in our absolute discretion, register the security interest in the Equipment created under these Terms on the PPSR.

3.10 If, for any reason:

- (a) due to an act or omission by you; or
- (b) you become insolvent or if a corporation you go into liquidation, have a receiver, administrator or manager appointed; or
- (c) whilst the Equipment remains or is intended to remain under your care and control pursuant to these Terms, the rights to or ownership of the Equipment by us are prejudiced or will be lost whether by loss of priority under the PPSR or otherwise, then it is expressly agreed that:

- (a) these Terms shall be deemed to have been terminated by mutual agreement on the Business Day immediately preceding the event or occurrence which would otherwise have effected our loss or rights or ownership;
- (b) the Equipment shall be and shall be deemed to have been surrendered by you to us on such date of termination;
- (c) you, if still in possession of the Equipment from such date of termination, shall hold the same as a bare bailee only;
- (d) you will be liable as a bare bailee of the Equipment from such date of termination until we have repossessed or are in possession of it.

4. YOUR OBLIGATIONS AND WARRANTIES

4.1 You warrant that you will not employ, canvass, solicit, entice, induce or attempt to employ any employee or contractor that was employed by or contracted to us during the time that we provided Services to you or during the 12 month period prior to that time.

4.2 You warrant that throughout the term of these Terms that:

- (a) there are no legal restrictions preventing you from agreeing to these Terms;
- (b) you will cooperate with us, and provide us with access to the Site and Site services and will further provide us with information, instructions and feedback that is reasonably necessary to enable us to perform the Services, as requested by us from time to time, and comply with these requests in a timely manner;
- (c) the information you provide to us is true, correct and complete;
- (d) you will not infringe any third party rights in working with us and receiving the Services;

- (e) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns;
- (f) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;
- (g) you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you;
- (h) if applicable, you hold a valid ABN which has been advised to us; and
- (i) if applicable, you are registered for GST purposes.

5. OUR INTELLECTUAL PROPERTY

5.1 The Materials contain material which is owned by or licensed to us and is protected by Australian and international laws. We own the Intellectual Property rights in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.

5.2 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any Intellectual Property rights in our Materials, except as stated in these Terms or with our written permission.

5.3 Your use of our Materials does not grant you a licence, or act as a right to use any Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.

5.4 You must not breach our Intellectual Property rights by, including but not limited to:

- (a) altering or modifying any of the Materials;
- (b) creating derivative works from the Materials; or
- (c) using our Materials for commercial purposes such as onsale to third parties.

5.5 We will license the Licensed Material to you provided that you have paid us for it.

5.6 We grant you a limited licence to use the Licensed Material in respect of only in respect of the works to be conducted on the Site.

5.7 This clause will survive the termination of these Terms.

6. YOUR INTELLECTUAL PROPERTY AND MORAL RIGHTS

6.1 You agree to provide information including any Intellectual Property to us to enable us to provide the Services. You:

- (a) warrant that you have all necessary rights to provide the Intellectual Property to us;

- (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use the Intellectual Property in any way we require to provide the Services to you; and
- (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.
- 6.2 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:
- (a) irrevocably consent to any amendment of the Intellectual Property in any manner by us for the purposes of providing Services to you;
- (b) irrevocably consent to us using or applying the Intellectual Property for the purposes of providing Services to you without any attribution of authorship;
- (c) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
- (d) agree that your consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statements.
- 6.3 This clause will survive the termination of these Terms.
- 7. CONFIDENTIAL INFORMATION**
- 7.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than where necessary, to third party suppliers, or as required by law); to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; only to use the Confidential Information for the purpose for which it was disclosed by you, and not for any other purpose.
- 7.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, to provide better quality services to you and not for any other purpose.
- 7.3 These obligations do not apply to Confidential Information that:
- (a) is authorised to be disclosed;
- (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
- (c) is received from a third party, except where there has been a breach of confidence; or
- (d) must be disclosed by law or by a regulatory authority including under subpoena.
- 7.4 This clause will survive the termination of these Terms.
- 8. FEEDBACK AND DISPUTE RESOLUTION**
- 8.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.
- 8.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them at an initial meeting.
- (b) If the Parties cannot agree how to resolve the dispute at that initial meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 8.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 9. TERM AND TERMINATION**
- 9.1 This Agreement will begin when you accept the Quote Form and these Terms in accordance with sub-clause 1.2 and continue until the End Date, or the date on which these Terms are terminated in accordance with this clause, if earlier.
- 9.2 If no End Date is specified in the Quote Form, either Party may terminate these Terms without cause by giving 30 days' notice in writing, including by email.
- 9.3 If you wish to cancel the Services before installation you may do so on payment for all materials and Equipment that we have ordered as at the date of cancellation.
- 9.4 Either Party may terminate these Terms if there has been a material breach of these Terms, subject to following the dispute resolution procedure.
- 9.5 We may terminate these Terms immediately, at our sole discretion, if:
- (a) we consider that a request for the Services is inappropriate, improper or unlawful;
- (b) you fail to provide us with clear or timely instructions and/or information to enable us to provide the Services;

- (c) you fail to provide us with sufficient and safe access to the Site as reasonably required during normal working hours;
- (d) we consider that our working relationship has broken down including a loss of confidence and trust;
- (e) for any other reason outside our control which has the effect of compromising our ability to perform the Services within the required timeframe; or
- (f) an invoice is overdue and you fail to pay an invoice within 14 Business Days of a written demand for payment.
- 9.6 On termination of these Terms you agree that any Deposit or payments made are not refundable to you, and you are to pay for all Services provided prior to termination, including any Services which have been performed and have not yet been invoiced to you.
- 9.7 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.
- 9.8 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property.
- 9.9 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 9.10 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 10. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 10.1 **ACL:** If you are a consumer as defined in the ACL, the following applies to you: *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 services remedied if they are not rendered with due care and skill or they are not fit for purpose and the failure does not amount to a major failure.* To the extent we are able to exclude liability; our total liability for loss or damage you suffer or incur from our Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.
- 10.2 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in the period set out in the Quote Form where it is affected by your delay in response, or supply of incomplete or incorrect information.
- 10.3 **Referral:** We may provide you with contact details of third parties. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or their failure to advise or provide services.
- 10.4 **Warranties:** To the extent permitted by law, we exclude all express and implied warranties representations and guarantees and all material and work is provided to you without warranties, representations and guarantees of any kind, either express or implied. We expressly exclude all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 10.5 **Availability:** To the extent permitted by law, we exclude all liability for:
- the Services being unavailable; and
 - any Claims (whether direct, indirect, incidental, special, consequential and/or incidental) for loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation or any loss or damage relating to business interruption or otherwise, suffered by you or made against you, arising out of or in connection with your inability to access or use the Services or the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.
- 10.6 **Disclaimer:** All works designed by us as a part of the Services are based on information and specifications that you have supplied to us. You acknowledge and agree that you will be solely responsible for the accuracy of that information and those specifications and agree to indemnify and hold us harmless against any loss, harm or damage caused by inaccuracy or failure to comply with any relevant codes, laws and regulations.
- 10.7 **Limitation:** To the extent permitted by law our total liability arising out of or in connection with the Services, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not

- exceed the amount recovered or recoverable under our insurance policies.
- 10.8 This clause will survive the termination of these Terms.
- 11. INDEMNITY**
- 11.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- (a) any information provided by you that is not accurate, up to date or complete or is misleading or a misrepresentation;
 - (b) any breach of these Terms by you;
 - (c) any misuse of the Equipment and/or Services by you, your employees, contractors or agents;
 - (d) any loss or damage occasioned to your property or persons on your property that is caused by you, your employees, contractors or agents;
 - (e) any inconvenience, harm, loss, damage or breach of any law, regulation, code or third party rights occasioned by us in complying with your instructions; or
 - (f) your breach of any law or third party rights.
- 11.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 11.3 This clause will survive the termination of these Terms.
- 12. GENERAL**
- 12.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 12.2 **Publicity:** You consent to us advertising or publically announcing that we provided Services to you, including but not limited to mentioning you on our Site and in our promotional material.
- 12.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 12.4 **GST:** If and when applicable, GST payable on the Fee for the Services will be set out on our invoices. You agree to pay the GST amount at the same time as you pay the Fee.
- 12.5 **Relationship of parties:** These Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.
- 12.6 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 12.7 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 12.8 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate our agreement with you by giving you 5 Business Days' notice in writing.
- 12.9 **Notices:** Any notice required or permitted to be given by either Party to the other under these Terms will be in writing addressed to the relevant address in the Quote Form. Any notice may be sent by standard post or email, and notices will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 12.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of New South Wales and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales.
- 12.11 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.
- 13. DEFINITIONS**
- 13.1 **ACL** means the Australian Consumer Law.

- 13.2 **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales, Australia.
- 13.3 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement or otherwise.
- 13.4 **Confidential Information** includes confidential information about you, your credit card or payment details, and the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, technology, and other information of either Party whether or not such information is reduced to a tangible form or marked in writing as "confidential".
- 13.5 **Deposit** is set out in the Quote Form.
- 13.6 **End Date** is as set out in the Quote Form if specified or otherwise is the date when the Services have been provided.
- 13.7 **Equipment** means residential, commercial or industrial air conditioning, refrigeration, HVAC or engineering equipment as set out in the Quote Form.
- 13.8 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 13.9 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs, any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.
- 13.10 **Invoice Terms** is set out in the Quote Form.
- 13.11 **Licensed Material** means the Materials.
- 13.12 **Materials** means work and materials that we provide to you in carrying out the Services, including, but no limited to, plans, designs, drawings, engineering documents, quotes and tenders.
- 13.13 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).
- 13.14 **Personal Property Securities Register** means the system of registration and priority created pursuant to the *Personal Property Security Act 2009* (Cth).
- 13.15 **PPSR** means the Personal Property Securities Register.
- 13.16 **Price** is set out in the Quote Form.
- 13.17 **Quote Form** means the quote form to which these Terms are attached.
- 13.18 **Services** means the supply, installation, repair and servicing of Equipment as set out in the Quote Form.
- 13.19 **Site** means the location in respect of which you have requested us to provide Services.
- 13.20 **Terms** means these terms and conditions.
- 13.21 **Terms of Payment** is set out in the Quote Form.
- 13.22 **Variation** means amended or additional services, including but not limited to changes to Equipment and Services in the Quote Form.
- 13.23 **Variation Fee** means the additional cost for a Variation.
- 13.24 **Website** means our website at www.coalfieldsclimate.com.au.
- Unless otherwise defined herein or the context otherwise requires, capitalised terms used in these Terms will have the meanings given to them in the Quote Form.

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