

Standard Terms and Conditions for Trading with Unicorn Air Conditioning & Refrigeration Pty Ltd ACN 15 163 946 727 ("Unicorn Air")

1. Incorporation

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

2. Payment

- The terms of payment to Unicorn Air are as follows:
 - a) 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;
 - b) 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;
- Failure to pay within agreed credit terms will automatically create stop credit and will not be recommenced until payment is received for all amounts outstanding beyond agreed credit terms.
- Without prejudice to any other remedy, Unicorn Air reserves the right to charge a default charge on any overdue payments at an annual rate equal to the Commonwealth Bank's current overdraft rate at the time the payment fell due.**

3. Quotations and Prices

- Any quotation given by Unicorn Air is a mere invitation to treat and does not constitute a contractual offer. All quotations hold for 30 (thirty) days after issue, however Unicorn Air may withdraw a quotation at any time.
- 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 Unicorn Air reserves the right to vary the quotation price.
- All quoted prices are exclusive of GST unless otherwise stated.
- Quoted prices are based on cash/electronic transfer payment unless specified. Any finance plans, interest free plans, credit cards or other payment methods shall include administration and applicable fees.

4. Delivery

- The times quoted for delivery are estimates only and Unicorn Air accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of Unicorn Air.
- Risk in the Goods passes on delivery to the Customer.

5. Unicorn Air's Warranty and Claims

- Service under warranty shall only be available between the hours of 7.30am to 4.00pm Monday to Friday, and excludes public holidays, and warranty does not include routine maintenance service including filter cleaning, rectification of faults arising from power failure, misuse of equipment, lack of routine maintenance or operator error.
- Warranty for the purpose of this clause is either:
 - a) Installation warranty; a guarantee of workmanship and associated ductwork and materials on new installations for a period of 24 (twenty-four) months whereby Unicorn Air will repair the product in the event of any defect;
 - b) Service warranty; a guarantee of workmanship for service repair work for a period of 3 (three) months where the works will be performed again in the event of any defects associated with the initial service work.
- The Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a "major failure" and for compensation for any other reasonably foreseeable loss or damage. The Customer 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".
- The benefits to you given by Unicorn Air's 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.
- If the Customer wishes to make a claim under this warranty, it should:
 - o contact: **02 9499 6415**;
 - o Email sales@unicornair.com.au;
- Clause 9 applies to this warranty.
- Warranty on new air conditioning units and new parts are subject to the manufacturer's warranty. However, where permissible by law, the customer 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.
- The Customer must provide proof of purchase to make a claim under any warranty.

6. Retention of Title

- All equipment supplied and installed by Unicorn Air remains the property of the Company until all monies outstanding to the Company in connection with these Terms and Conditions have been paid.
In the event of a default by the Customer, then without prejudice to any other rights which Unicorn Air may have at law or under this contract:
 - a) Unicorn Air or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.
 - b) Unicorn Air may recover and resell the Goods;
 - i. If the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Unicorn Air may in its absolute discretion seize all Goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Unicorn Air and the Customer may be ascertained. Unicorn Air must promptly return to the Customer any Goods the property of the Customer and Unicorn Air is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
 - ii. In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Unicorn Air. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the Unicorn Air at the time of the receipt of such proceeds. The Customer will pay Unicorn Air such funds held in trust upon the demand of Unicorn Air.
 - c) The Customer agrees to pay Unicorn Air all costs and disbursements incurred by Unicorn Air in recovering any unpaid monies from the Customer and its agents (including but not limited to internal administration fees, legal costs of a solicitor, collection agency costs, and bank dishonour fees)

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

- a) Defined terms in this clause have the same meaning as given to them in the PPSA.
- b) Unicorn Air 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 Unicorn Air over the Goods supplied or to be supplied to the Customer as Grantor pursuant to these Terms and Conditions.
- c) 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.
- d) Unicorn Air and the Customer acknowledge that Unicorn Air, 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.
- e) 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 Unicorn Air.
- f) The Customer agrees to indemnify Unicorn Air on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;
 - i. registration or amendment or discharge of any Financing Statement registered by or on behalf of Unicorn Air; and
 - ii. enforcement or attempted enforcement of any Security Interest granted to Unicorn Air by the Customer.
- g) The Customer agrees:
 - i. 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;
 - ii. to waive its right to do any of the following under the PPSA:
 - A. receive notice of removal of an Accession under section 95;

- B. receive notice of an intention to seize Collateral under section 123;
- C. receive notice of disposal of Collateral under section 130;
- D. receive a Statement of Account if there is no disposal under section 130(4);
- E. receive notice of retention of Collateral under section 135;
- F. redeem the Collateral under section 142;
- G. reinstate the Security Agreement under section 143;
- H. object to the purchase of the Collateral by the Secured Party under section 129; and
- I. 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.

8. Retention Money

- Unless otherwise provided in writing in this tender, the purchaser shall not be entitled to retain any part of the purchase price by way of retention monies to guarantee satisfactory operation of the equipment supplied and installed.

9. Warranties

- a) Unicorn Air's liability in respect of a breach of a consumer guarantee for any Goods not of a kind ordinarily acquired for personal, domestic or household use is limited, to the extent permissible by law and at Unicorn Air's option;
 - i. in relation to the Goods:
 - A. the replacement of the products or the supply of equivalent products;
 - B. the repair of the products;
 - C. the payment of the cost of replacing the products or of acquiring equivalent products; or
 - D. the payment of the cost of having the products repaired.
 - ii. in relation to the services:
 - A. the supply of the services again; or
 - B. the payment of the cost of having the services supplied again.
- b) To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions are excluded and Unicorn Air is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer 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 caused by Unicorn Air's failure to complete or delay in completing the order to deliver the Goods.
- c) Any claims to be made against Unicorn Air for short delivery of Goods must be lodged with Unicorn Air in writing within 3 (three) days of the delivery date.
- d) System maintenance is the responsibility of the Customer; drains, filters, etc should be cleaned regularly to avoid any damage to property. Any damage arising from failure to regularly maintain the system by the Customer is not covered by warranty.
- e) If in the event a service call is placed and it is found that the equipment is operating normally or malfunctioning due to misuse or negligence by the Customer or the equipment has not been properly maintained by a licensed air conditioning company in accordance with the manufacturer's recommendations, the Customer will pay the cost of the service call together with labour and material costs.
- f) Warranty will not be covered if it is found equipment is damaged by outside influences beyond the control of Unicorn Air. Some examples of these are: incorrect voltage, vandalism to equipment, flood, fire, lightning strike, modifications to equipment carried out by unauthorised personnel.
- g) **All care will be taken when walking through ceilings whilst carrying out the work however it is not Unicorn Air's responsibility to repair any damage to ceilings from gyprock fixing screws or gyprock joins pushing through the set due to modern truss roofs flexing.**
- h) Unicorn Air is not responsible for minor cracks and blemishes that may appear in ceilings and walls where duct outlets and return airs are installed; due to the construction techniques used in modern houses and older fragile ceilings this can be an unavoidable occurrence. All care will be taken in trying to avoid this eventuality.
- i) In some circumstances planning approval may be required prior to installation of any outdoor units depending upon the Council involved; it is the Customer's responsibility to determine whether this is the case and to obtain any necessary approvals that may be required.
- j) Any equipment required to be relocated due to any requirements, such as complaints by others, local authority request, customer request but not excluding other reasons, shall be incurred by the customer and not by Unicorn Air.

10. Indemnity

- To the full extent permitted by law, the Customer will indemnify Unicorn Air and keep Unicorn Air indemnified from and against any liability and any loss or damage Unicorn Air 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.

11. Exclusions

- 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.
- This tender shall exclude the following items and it shall be the responsibility of the Customer to provide the same unless otherwise agreed in writing:
 - the performing of any building work including (but not limited to) cutting holes, patching, painting, flashing, boxing in;
 - furring in, plinths or platforms;
 - metered electrical mains brought to a point adjacent to the equipment as required;
 - alterations to the switchboard or existing mains supply;
 - condensate drains brought to a point adjacent to the equipment as required;
 - Supply and fitting of door relief grilles;
 - Local authority approval, inspection, reports or any certificates;
 - Noise reduction and /or acoustic attenuation procedures;
 - Engineered drawings, plans and development application & fees.
- Extra costs incurred due to deliverance of work by Customer's instructions or lack of instructions, interruptions, delays, unusual hours, additional site visits, mistakes or work for which Unicorn Air are not responsible for, shall be paid by Customer.

12. Risks

- Unicorn Air does not guarantee any noise levels (external or internal) and shall not be held liable for any loss, damages, or costs, however resulting from noise levels.
- It is agreed that any scaffolding supplied by the Customer will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.
- Any furniture, furnishings or personal goods must be protected near the vicinity of the works by the Customer. Unicorn Air shall not be liable for any damage caused to those items through the Clients failure to protect such belongings.

13. Building and Construction Industry Security of Payments Act 1999

- At Unicorn Air's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

14. General

- a) These Terms and Conditions are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia.
- b) These Terms and Conditions contain all of the Terms and Conditions of the contract between the parties and may only be varied by agreement in writing between the parties.
- c) Any conditions found to be void, unenforceable or illegal may, to that extent be severed from these Terms and Conditions.
- d) No waiver of any of these Terms and Conditions or failure to exercise a right or remedy by Unicorn Air will be considered to imply or constitute a further waiver by Unicorn Air of the same or any other term, condition, right or remedy.