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TROPICAIR HEATING 2021 LTD

TERMS AND CONDITIONS OF SALE AND CREDIT

1. General

1.1. The acceptance of Tropicair Limited's quote or tender price includes the acceptance of the following terms and conditions.

1.2. Definitions.

1.3. PPSA means the Personal Property Securities Act 1999.

1.4. The terms collateral, debtor, financing statement, financing change statement, inventory, proceeds, and security interest have the meanings as defined in the PPSA. Purchase Money Security interest (PMSI) has the meaning defined in Section 16 of the PPSA.

1.5. Tropicair means Tropicair Heating 2021 Limited.

1.6. Goods means all goods supplied from time to time by Tropicair and includes all proceeds of such goods provided that:

1.6.1. Where the goods supplied are the client's inventory then all references to goods shall in respect of those goods be read as references to inventory; and

1.6.2. Where the goods supplied are not inventory then all references to goods shall in respect of those goods, mean those goods supplied per quote and invoice.

1.6.3. Client means the client to whom the goods are supplied pursuant to the quotation/tender provided by Tropicair. Where the client is a company it means the registered name of the company. Where the client is a sole trader it means the full name of the sole trader. Where the client is a partnership it means both the partnership name and each partner of the partnership.

2. Prices

2.1. Prices quoted are based upon costs current at the date of quotation. Tropicair may withdraw any quotation before it is accepted and, in any event, any quotation will lapse without notice 30 days after it is given.

2.2. All prices quoted are exclusive of GST and any other duties and taxes will be payable as an additional amount on all prices and charges.

2.3. Items required due to issues not visible or detected at the time of quotation shall be charged as additions on the final account.

2.4. Should scaffolding be required then such costs shall be charged as additions on the final account.

3. Terms of Payment

3.1. Unless otherwise agreed in writing, payment for goods must be made within seven (7) days from the date the goods are installed and operative.

3.2. Where other payment terms are agreed, payment must be made in accordance with those terms.

3.3. A deposit of fifty (50%) percent shall be payable upon acceptance of the quotation.

3.4. Should payment in full not be made on the due date, then without prejudice to any other remedies available to Tropicair it may:

3.4.1. cancel or withhold the supply of further goods:

3.4.2. charge and recover interest charged on a daily basis at a rate of 2% per month during the period of default up until the date of payment; and

3.4.3. the client shall be responsible for all costs (including costs on a solicitor/client basis) and debt collection charges incurred by Tropicair in recovering all outstanding amounts.

4. Dimensions of Other Descriptive Details

4.1. Photographs, illustrations, weights, dimensions and any other particulars given in or accompanying quotation or descriptive literature, represent generally the goods offered but are subject to alteration without notice by the manufacturer and Tropicair shall not be bound as to the details thereof.

5. Warranties

5.1. Subject to clause 9, Tropicair warrants the goods are supplied free of defects in materials or workmanship under normal usage. In the event of defect in materials or workmanship Tropicair will repair or exchange any defective part provided that the defect is brought to the attention of Tropicair within five (5) years from the date of sale of the goods and Tropicair is reasonably satisfied the defect is caused by fault in the materials or manufacturing workmanship. This warranty is exclusive to the client and is not transferable.

5.2. Tropicair shall not be liable for any consequential or special damages under any circumstances whatsoever.

5.3. All quoted performance figures are based upon previous experience and reasonable expectation of ordinary usage. Any units not reasonably performing to those quoted standards will be replaced, if replaced Tropicair will have no further liability to the client.

6. Credit

6.1. There is no obligation for Tropicair to continue to provide credit and it may at any time withdraw the credit facility granted and require immediate payment of the total amount due and outstanding by the client including the purchase price of the goods, and all interest and expenses.

7. Insurance

7.1. The goods become the responsibility of the purchaser upon delivery to the purchaser and all risk (including loss, damage or deterioration) passes to the purchaser. Tropicair is not required to insure the goods from delivery.

8. Delivery and non-availability

8.1. Any delivery dates quoted by Tropicair are estimates only. Tropicair will use reasonable endeavours to see that deliveries are made according to schedule but shall not be responsible for delivery delays due to causes beyond Tropicair 's control and the client agrees to accept delivery as soon as the goods are able to be delivered.

8.2. All goods ordered by the client are subject to such goods being available for delivery and Tropicair accepts no responsibility for non-availability of goods and shall not be liable for any act of God or force majeure event, including, but not limited to, industrial disputes, war or delays or defaults of manufacturers, which delays or frustrates the performance of this agreement.

9. Consumer Guarantees Act 1993 (CGA)

9.1. If the CGA applies, the terms and conditions shall be read subject to the client's rights under the CGA, provided that where the client is acquiring goods for business purposes, the CGA shall not apply.

10. Personal Property Securities Act 1999 (PPSA)

10.1. To secure payment of all amounts owing by the client to Tropicair from time to time, the client as debtor grants a security interest in all goods purchased from Tropicair previously supplied by Tropicair to the client and all present and after acquired goods supplied by Tropicair to the client. The client agrees that the goods are collateral securing payment of all outstanding indebtedness owing by the client to Tropicair.

10.2. The client acknowledges and agrees that the security interest given to Tropicair includes a security interest in all proceeds of collateral.

10.3. The client acknowledges and agrees that the security interest given to Tropicair is a PMSI.

10.4. The client agrees to waive its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest and that the client contracts out of sections 114(1)(a), 117(1)(c), 133, or 134 of the PPSA. The rights of a debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA do not apply to the security interest given by the client to Tropicair.

10.5. The client agrees to provide any information or sign any document required under the PPSA and the regulations under the PPSA to enable Tropicair to register a financing statement or a financing change statement.

10.6. In the event that the Client is in default under these Terms or TROPICAIR considers the goods to be at risk the Client hereby irrevocably gives TROPICAIR, its officers, employees and agents licence without the necessity of notice to enter onto any premises owned or occupied by the Client to search for and take possession of the goods and remove them without being in any way liable to the Client or anyone claiming under the Client for doing so. If the goods are wholly or partially attached to or incorporated in any

other goods TROPICAIR may disconnect or sever them in any way necessary to remove the goods.

10.7. Should the goods be merged into other goods then Tropicair shall have a general security created over the new goods so created for the moneys outstanding.

10.7.1. Agreement to Mortgage if land.

10.8. Should the goods be merged into land then an interest in that land shall be created in favour of Tropicair by way of a charge or mortgage over that property. Tropicair shall be entitled to call upon the Client to execute a mortgage in favour of Tropicair over that land and Tropicair shall be entitled to register such mortgage and until such is registered maintain a caveat over the said land.

11. Spreading of Payments

11.1. Tropicair may allocate any money received in payment for goods supplied towards debts, charges and expenses owing in any priority it determines so that payments can be applied in partial payment of all or any outstanding invoices to maintain a PMSI in the goods.

12. Installation Charges

12.1. Installation will be performed during normal business hours, any work performed outside normal business hours will be subject to extra payment at additional overtime rates.

12.2. Tropicair shall not be charged any penalty whatsoever as a result of late completion of the contract caused by delay by a Head Contractor and nothing said to the contrary of this provision shall be binding on Tropicair.

13. Ownership

13.1. Property in goods sold by Tropicair shall not pass until the client has made payment in full of the purchase price for those goods to Tropicair. Until such payment is made the client will hold the goods as bailee for Tropicair and Tropicair shall have the right to enter the premises occupied by the client and take possession of any of those goods at any time after payment is due.

13.2. If the goods or any of them are resold before payment is made, the client shall hold the sale proceeds for and on trust for Tropicair. The proceeds of any such sale will reduce the debt to Tropicair and Tropicair may take such legal remedies as are available to it to recover any balance outstanding. The client agrees that any collection costs incurred by Tropicair in collection of all or any part of any overdue debt on this account will be payable by it.

14. Privacy Act

14.1. The client expressly authorises Tropicair to make any enquiries it considers necessary for confirmation of any information set out on this application. The client understands that it has rights under the Privacy Act 1993 to access and correct any information held by Tropicair about the client.

15. Authority

15.1. The persons signing the application confirm(s) having the authority to make and sign this application on behalf of the client.

16. Terms of Contract

16.1. Any goods supplied by Tropicair shall be subject to these terms unless agreed otherwise in writing. The client's acceptance of goods from Tropicair is deemed to be an acceptance of these terms notwithstanding anything that may be stated to the contrary in or contained in the client's purchase order and whether the client has signed these conditions or not.

16.2. Waivers of or changes to these terms are effective only if made in writing and signed on Tropicair's behalf. Tropicair reserves the right to modify these terms at any time.

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DEFINITIONS

"The Seller", "The Company", "The Supplier", "We", "TROPICAIR" shall refer to Tropicair Heating Limited or any agents or employees thereof.
"The customer", "Buyer", "You", "Your" shall mean any person or persons, company or business entity to whom TROPICAIR sells or supplies, or proposes to sell or supply, Goods or Services.

The "Goods" and/or "Services" means any goods, products, and/or services supplied by TROPICAIR to the Customer.

Terms

These terms and conditions "Terms" apply to each contract to supply goods or services by TROPICAIR to the party purchasing the goods or services and supersede any previous terms and conditions agreed between the parties. By accepting a quote from TROPICAIR, the Buyer agrees to be bound by these Terms.

Credit Referees

If pursuing credit terms: Pursuant to the provisions of Privacy Act and its successors, the buyer authorizes any person or company to provide TROPICAIR with such information as required in response to the credit enquiries. The buyer further authorizes TROPICAIR to furnish any third party details of this application and any subsequent dealings that may result of this application being actioned.

Price

Prices noted on estimates and quotes are GST and freight exclusive unless stated otherwise. The price shall be increased by:

(a) the amount of any GST and other taxes and duties which may be applicable; and
(b) Any modifications in design or specification of the goods or service requested by the customer that was not provided for in the original quote or estimate.
(c) If the job was quoted on the assumption that a digital file (DXF) would be supplied by the customer and the customer has not supplied a drawing in compliance with Section 14.

A contract is created and the Customer is bound to pay the price when TROPICAIR accepts the Customer's order in writing. Each accepted order shall constitute a separate contract. A quotation does not create a binding contract until the Customer places an order that is then accepted by TROPICAIR.

All quotes, estimates and pricing, unless otherwise specified, are valid for 30 days from the date of issue and may be subject to such further conditions as are expressly set out in the quote, estimate or pricing.

Product Information and Statements

No warranty is given as to:
(a) The accuracy of any technical and other data given to the buyer in printed material relating to goods, unless the seller and the buyer otherwise agree in writing.
(b) The conformity of any delivered goods to any samples supplied.
(c) The design, functionality, fit or form of the product if being made to the buyer's specifications.

All drawings and technical documents delivered by one party to the other party shall remain the property of the first party and must not be used by the other party or reproduced or brought to the knowledge of third persons without the consent of the first party. Where the seller has made any goods to the specifications supplied by the buyer, the buyer shall indemnify the seller from any cost, claim, loss or expense arising as a result of those specifications infringing or being alleged to infringe any patent, copyright, registered design or other intellectual property right of any other person.

No other warranties either express or implied by law are made with respect to these products.
If the Consumer Guarantees Act applies, then any guarantee implied by it shall be part of this contract unless the goods or services are for business purposes in which case clause 6 (liability) shall apply.

Liability

The seller shall not be liable for failure to deliver the goods by a specified date or for loss suffered by the buyer as a result of any event beyond the control of the seller.
The seller shall only be responsible to comply with the regulations, bylaws, codes and standards specified in the contract and shall be under no liability whatsoever for any failure to meet any other regulations, bylaws, codes and standards.

The seller may make suggestions to the buyer and may issue drawings to the buyer for approval. However the seller makes no representations as to being a design, structural or civil engineer or architect or other authority and it is the buyer's responsibility to ensure that the designs and goods are fit for purpose or are of acceptable quality in all respects and to seek independent advice and verification from suitably qualified professionals when appropriate.

Notwithstanding anything in these terms and conditions, any liability of the seller shall not exceed the price of the contract under which such liability has arisen.
Notwithstanding any other provision of these Terms, under no circumstances, shall TROPICAIR be liable to the Customer or any other person (whether in contract, tort, including negligence, statute or otherwise) for any:

(a) loss of profits;
(b) consequential loss or damage;
(c) indirect loss or damage; or
(d) special loss or damage of any kind; or (e) legal or other costs

Delivery and Risk

Delivery of the goods shall be made at the seller's premises unless otherwise agreed in writing. If the buyer fails to take delivery, the goods shall be deemed to have been delivered when the seller was willing to deliver them. In this event any cost to the seller for transport and/or storage shall be to the buyer's account.

Risk in the goods shall pass to the buyer on delivery. Tropicair are under no responsibility to insure goods at any stage nor are they under any other duty of care or bailment while the goods are awaiting collection by the buyer.
Unless agreed in writing by TROPICAIR, all goods left with the Company for more than seven (7) days after completion of processing shall attract a storage fee equal to 10% of the total invoice value each week.

Payment

Payment for goods supplied and any freight or insurance charges and goods and services tax shall be made by the buyer no later than the 20th of the month following the date of invoice unless the seller has otherwise agreed in writing. Interest at the rate of 15% per annum shall be payable on all amounts overdue calculated as from the date when due and payable until the date of payment and the charging of interest shall be in addition to all other rights of the seller.

All collection and legal costs incurred in the recovery of outstanding monies will be payable by the buyer.

Insolvency of the Purchaser

If, before delivery, there arises reasonable grounds for belief that the buyer will not be able to fulfil its payment obligations to the seller on the required date, the seller shall have the right to demand security or payment in advance of delivery. If security to the reasonable satisfaction of the seller is not offered or, if payment in advance of delivery is not made without delay, the seller may cancel the order.

Title to Goods

Until the account is paid in full, the seller will retain ownership of any goods or services provided and shall be entitled to remove the said in the event that the account rendered for the same remains unpaid.

The Buyer grants to TROPICAIR a security interest in the goods as that term is defined under the Personal Property Securities Act 1999 ['PPSA'] and any further goods supplied and any proceeds of such goods until all amounts required to be paid by TROPICAIR have been paid in full. The parties hereby contract out of Part 9 of PPSA so that the rights and obligations contained in Sections 114, 125, 129, 132, 133 and 134 of that Part do not apply between the parties, and the Buyer waives its rights under Section 121 and 131 and its right under Section 148 to receive any financing statement or financing change statement from TROPICAIR.

In the event that the Buyer is in default under these Terms or TROPICAIR considers the goods to be at risk the Buyer hereby irrevocably gives TROPICAIR, its officers, employees and agents licence without the necessity of notice to enter onto any premises owned or occupied by the Buyer to search for and take possession of the goods and remove them without being in any way liable to the Buyer or anyone claiming under the Buyer for doing so. If the goods are wholly or partially attached to or incorporated in any other goods TROPICAIR may disconnect or sever them in any way necessary to remove the goods.

Should the goods be merged into other goods then Tropicair shall have a general security created over the new goods so created for the moneys outstanding.
Should the goods be merged into land then an interest in that land shall be created in favour of Tropicair by way of a charge or mortgage over that property. Tropicair shall be entitled to call upon the buyer to execute a mortgage in favour of Tropicair over that land and Tropicair shall be entitled to register such mortgage and until such is registered maintain a caveat over the said land.

Cancellation and Returns

Orders once placed and accepted can be cancelled only with TROPICAIR's prior written consent and upon terms that will save TROPICAIR from loss. Cancellation of items will not be accepted without full compensation being given to TROPICAIR for all expenses incurred after such orders are in production. TROPICAIR may, at its discretion, and upon such terms as it determines, accept returns of goods.

No Goods may be returned without first obtaining written permission from TROPICAIR. Such permission is to be requested from the Sales Office where the Goods were obtained.
Claims of incorrect or defective Goods must be made in writing to the Sales Office where the Goods were obtained within ten days from receipt of the Goods.

Sub-Contracting

The Customer acknowledges that TROPICAIR may sub-contract all or any part of the works that TROPICAIR has been contracted to carry out on such terms as it deems fit and to which the Customer hereby agrees.

Material Grade and Specification

TROPICAIR reserves the option to choose what material grade suits the Customer's order unless the Customer specifies in writing a particular material grade.
Customer supplied material must be within specification to fit our toolsets and machines.
Should a customer supply their own material we require a material certificate, we offer no guarantee and the job is processed completely at the customers risk on an "all care – no responsibility" basis.

Customer Supplied Drawings

If a quote has been prepared based off the customer supplying digital drawings, the following applies: a) All electronic drawing files (DXF, DWG, Solidworks etc) must be scaled 1:1, clean and ready for processing.
b) All electronic drawing files must have a unique name, if a supplied file is the same name as one previously supplied by the Customer, we will deem it as being the same.

c) A separate file is required for each profile.

Law and Jurisdiction

The contract shall in all respects be deemed to be a contract made under New Zealand law and the construction, validity and performance of the contract shall be governed be New Zealand law.