



McINTOSH AIR CONDITIONING DISTRIBUTION PTY LTD

10 Broadmeadow Road PO Box 286, BROADMEADOW, NSW, 2292
PH: (02) 49621155 Fax: (02) 49615101
Email: sales@mcintoshair.com.au Website: www.mcintoshair.com.au

Date A.B.N

Business Name Established
Trading As

Street Address
 P/c

Postal Address
 P/c

Phone Number Fax Number

Email Address Mobile

Bank Branch

Nominated Freight Company: Ph:

Credit Requested \$ Payment Contact

Company Accountant

Trade References (please supply 3 current trade referees)

Company Name 1
Phone Email

Company Name 2
Phone Email

Company Name 3
Phone Email

The Applicant(s) agree(s) that the undersigned declare that the information recorded in this application is true and correct and authorise you to contact any of the parties named for the purpose of establishing credit facilities by me/us in accordance with the *Privacy Act 1988*.

We note that your terms of credit is to be **STRICTLY NET 30 days** from the end of the month of trading. We acknowledge credit will be suspended if payment is not received by 45th day from EOM.

In consideration McIntosh Air Conditioning Distribution Pty Ltd providing the applicant(s) with goods on the terms and conditions of the Agreement overleaf the undersigned (The Guarantors) their executors, administrators, transferees or successors hereby jointly and severally, guarantee to McIntosh Air Conditioning Distribution Pty Ltd the due and punctual payment by default of the applicant.

Any change which materially affects this Application or the trading entities structure, must be notified to McIntosh Air Conditioning Distribution Pty Ltd in writing within 7 (seven) days of change becoming effected.

Property in the goods supplied **DOES NOT** pass, or be invested in the applicant, until paid for in full. For this purpose, cheques will only be accepted subject to clearance.

We have read and agree to the above and the "Terms and Conditions of Trade" as set out overleaf.

*Signature: Director/Guarantor 1 Date
Name: Director/Guarantor 1
(Please print name in full)

*Signature: Director/Guarantor 2 Date
Name: Director/Guarantor 2
(Please print name in full)

*Signature: Director/Guarantor 3 Date
Name: Director/Guarantor 3
(Please print name in full)

TERMS AND CONDITIONS OF TRADE

McIntosh Air Conditioning Distribution Pty Ltd ("the Seller")
ABN 69 053 015 795
PO Box 286, 10 Broadmeadow Road, Broadmeadow NSW 2292

Subject to the applicable provision of the *Trade Practices Act*, *Privacy Act 1988* and *State Consumer Legislation*.

1) GENERAL

Any order placed by a Purchaser is deemed to be an order incorporating these terms and conditions, notwithstanding any inconsistencies which may be introduced in the Purchaser's order of acceptance (unless expressly agreed to by the Seller in writing).

If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

All Goods supplied by the Seller are subject to the laws of New South Wales and the Seller takes no responsibility for changes in the law which affect the Goods supplied.

The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.

The Buyer shall not set off against the Price amounts due from the Seller.

The Seller may licence or sub-contract all or any of its rights and obligations without the Buyer's consent.

The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change.

In the event of any breach of the contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.

2) QUOTATIONS AND PRICES

Prices quoted are subject to alteration without notice to the Purchaser. Unless otherwise expressly agreed by the Seller in writing, all goods will be charged for at the prices ruling at the date or dates of delivery. All prices listed are exclusive of GST, which, if applicable, will be for the Purchaser's account.

3) TERMS OF PAYMENT

Net cash strictly 30 days from the end of the month that the goods were purchased, but the Seller reserves the right to vary the terms of payment and to require cash in full prior to delivery, should the credit worthiness of the Purchaser at any time be, in the Seller's opinion, unsatisfactory, or should the account fall into arrears, has the right to request immediate payment in full and revoke all credit facilities. If payment is not received by 45th day from EOM credit will be suspended until payment is received.

4) DEFAULT & CONSEQUENCES OF DEFAULT

Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.

If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all of the Seller's costs and disbursements including on a solicitor and own client basis and in addition of all nominated Debt Recovery Agent/s recovery costs of collection.

Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

5) CLAIMS

Any claim by the Purchaser for short delivery, or the delivery of the wrong goods, must be notified to the Seller in writing within 14 days after delivery of the goods to the Purchaser. Any claim which the Purchaser does not notify within the time aforesaid (time being of the essence), shall be deemed to have been absolutely waived.

6) RISK AND DELIVERY

The risk of loss or damage to the goods shall, notwithstanding Condition 8 below, pass to the Purchaser on delivery or if the Seller agrees to arrange for the despatch of the goods, to the Purchaser at the time of despatch. The Seller shall be under no obligation to insure goods despatched to it whilst in transit.

7) INSTALMENTS

The Seller reserves the right to delivery by instalments and each instalment shall be deemed to be sold under a separate contract. Failure by the Seller to deliver any instalment shall not entitle the Purchaser to cancel the balance of the order. In the event of the Purchaser making default in payment in respect of any instalment, the Seller may elect to treat the default as a breach of contract relating to each other instalment.

8) PROPERTY

(a) The parties agree that the ownership of goods is retained by McIntosh Air Conditioning Distribution Pty Ltd until payment for goods is received in full.

(b) Where the Seller has not been paid in the manner specified in the last preceding paragraph and goods are delivered to the Purchaser, then the Purchaser agrees with the Seller to keep the goods as a fiduciary for the Seller until they are disposed of by the Purchaser in accordance with the provision of this condition, and, if required by the Seller, store the goods in a manner that clearly shows the ownership of the Seller.

(c) Notwithstanding the provisions of the last preceding paragraph, the Purchaser may sell the goods to a third party in the course of business and deliver them to that party if:

- (i) the Purchaser is paid by that party whereupon the Purchaser will hold the whole of the proceeds of sale on trust for the Seller, or
- (ii) the Seller elects by notice in writing to the Purchaser to permit the Purchaser to do so, whereupon the Purchaser will assign his claim against that party to the Seller.

(d) For the purpose of giving the effect to and perfecting the agreement to assign specified in sub-paragraph (c)(ii) of this condition to the Purchaser irrevocably appoints the Seller as his attorney.

(e) The parties agree that the provisions of this clause apply notwithstanding any agreement, whether subsequent to this agreement or not between the parties under which the Seller gives the Purchaser credit.

(f) In the event of default in payment, the company may at its absolute discretion and without notice, enter the premises or property where it believes the Goods may be and retake possession of such good and the company shall not (other than as provided by law) be responsible for any damage incurred of the company's property.

9) RETURNS AND CANCELLATIONS

Custom made equipment will not be accepted on return. The return of Goods supplied ex stock may be accepted provided the returned Goods are received by the Seller within 14 days of the date of sale and provided the returned Goods are in the same condition as received. A 10% fee will be charged by the Seller for all returned Goods accepted back for credit.

10) PRIVACY ACT 1988

The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.

The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

- To assess an application by Buyer;
- To notify other credit providers of a default by the Buyer;
- To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
- To assess the credit worthiness of Buyer and/or Guarantor/s.

The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time;

- Provision of Goods & Services;
- Marketing of Goods and/or Services by the Seller, its agents or distributor in relation to the Goods and Services;
- Analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods or Services;
- Processing of any payments instructions, direct debit facilities and/or credit facilities requested by Buyer; and
- Enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation of the Goods and Services.

The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:

- To obtain a consumer credit report about the Buyer; and or
- Allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

11) SECURITY AND CHARGE

Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever.

- Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligation payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- To give effect to the provisions of Clause [15 (a) and (b)] inclusive hereof the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller to the Seller's nominated Debt Recovery Agent/s as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Seller and/or nominated Debt Recovery Agent/s shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

***I THE APPLICANT (PURCHASER) HAVE ACCEPTED & SIGNED OVERLEAF TO THE ABOVE TERMS & CONDITIONS**