

Canberra Air Conditioning Services – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document expressed to be supplemental to this Contract, and accepted in accordance with clause 2.
 - 1.2 **"Canberra Air"** means Canberra Air Conditioning Services Pty Ltd T/A Canberra Air Conditioning Services, its successors and assigns or any person acting on behalf of and with the authority of Canberra Air Conditioning Services Pty Ltd T/A Canberra Air Conditioning Services.
 - 1.3 **"Client"** means the person/s or entity requesting Canberra Air to provide the Works, including any person acting on behalf of and with the authority of the Client requesting the Canberra Air to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, means each Client jointly and severally; and
 - (b) if the Client is a partnership, means each partner jointly and severally; and
 - (c) if the Client is the trustee of a Trust, includes the Client in its capacity as trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
 - 1.4 **"Works"** means all services (including consultation, manufacturing and/or installation services) or Materials supplied by the Canberra Air to the Client at the Client's request from time to time.
 - 1.5 **"Worksites"** means the address nominated by the Client at which the Works are to be performed or the Materials supplied by Canberra Air.
 - 1.6 **"Intended Use"** means a product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.
 - 1.7 **"Non-Conforming Product"** means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
 - (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
 - 1.8 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
 - 1.9 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using the Canberra Air's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
 - 1.10 **"Price"** means the Price payable (plus any GST where applicable) for the Works as agreed between the Canberra Air and the Client in accordance with clause 6 below.
 - 1.11 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
2. **Acceptance**
 - 2.1 The Client is taken to have accepted and is immediately bound, jointly and severally, by these terms and conditions upon accepting Canberra Air's quotation, signing this Contract, or otherwise clearly indicating acceptance, including by placing an order for or accepting delivery of the Works after having had a reasonable opportunity to review these terms.
 - 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail to the extent of the inconsistency, unless otherwise expressly agreed in writing by the parties.
 - 2.3 The terms and conditions contained in this Contract may only be amended in writing with the consent of both parties.
 - 2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with Canberra Air and it has been approved with a credit limit established for the account.
 - 2.5 In the event that the supply of Works requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Canberra Air may refuse further supply on credit until satisfactory payment arrangements have been made.
 - 2.6 Any advice, recommendation, information, assistance or service provided by Canberra Air in relation to Materials or Works supplied is given in good faith to the Client, or the Client's agent and is based on Canberra Air's own knowledge and experience. To the extent permitted by law, Canberra Air accepts no liability arising from such advice, recommendation, information, assistance or service. Where such advice or recommendations are not acted upon then Canberra Air shall require the Client or their agent to authorise commencement of the Works in writing. To the extent permitted by law, Canberra Air is not liable for loss arising solely from the Client's decision to proceed contrary to Canberra Air's written advice.
 - 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with section 9 of the Electronic Transactions Act 2001 (ACT) or section 9 of the Electronic Transactions Act 2000 (NSW), as applicable, or any other applicable provisions of those Acts or any Regulations referred to in those Acts.
3. **Errors and Omissions**
 - 3.1 The Client acknowledges and accepts that Canberra Air shall not be liable, to the extent permitted by law, in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by the Canberra Air in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Canberra Air in respect of the Works.
 - 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence, wilful misconduct, or breach of a non-excludable statutory guarantee by the Canberra Air, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
4. **Authorised Representatives**
 - 4.1 The Client acknowledges that Canberra Air shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to Canberra Air, that person shall have the full authority of the Client to order any Works, and/or to request any variation thereto on the Client's behalf. The Client accepts that it will be liable to Canberra Air for reasonable costs incurred by Canberra Air (including Canberra Air's profit margin) in providing any Works, or variations requested thereto by the Client's duly authorised representative.
5. **Change in Control**
 - 5.1 The Client shall give the Canberra Air not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for loss reasonably incurred by the Canberra Air to the extent caused by the Client's failure to comply with this clause.
6. **Price and Payment**
 - 6.1 At the Canberra Air's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Canberra Air to the Client in respect of Works performed or Materials supplied; or
 - (b) the Canberra Air's quoted Price (subject to clause 6.2) which shall be binding upon the Canberra Air provided that the Client shall accept the Canberra Air's quotation in writing within thirty (30) days.
 - 6.2 Canberra Air reserves the right to change the Price:
 - (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentified difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, lack of crawl spaces and/or inspection points, availability of machinery, safety considerations including the discovery of asbestos, prerequisite work by a third party not being completed, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, obscured building defects, change of design, delays, hidden pipes and wiring in walls, ceilings, voids or cavities etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to the Canberra Air in the cost of labour or Materials which are beyond the Canberra Air's control, provided Canberra Air gives the Client written notice of the increase before carrying out the additional Work.
 - 6.3 Variations will be charged for on the basis of the Canberra Air's quotation, and will be detailed in writing, and shown as variations on the Canberra Air's invoice. The Client shall be required to respond to any variation submitted by the Canberra Air within ten (10) working days. If the Client does not respond within ten (10) working days, Canberra Air may only charge for the variation where the variation has been requested by, or otherwise authorised by, the Client.
 - 6.4 At the Canberra Air's sole discretion a non-refundable deposit may be required provided the amount of the deposit is specified in the quotation or otherwise agreed by the parties before the Works commence.
 - 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Canberra Air, which may be:
 - (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with the Canberra Air's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed; or
 - (c) five (5) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is either:
 - (i) thirty (30) days following the date of any invoice given to the Client by Canberra Air for commercial credit account holders; or
 - (ii) forty five (45) days following the date of any invoice given to the Client by Canberra Air for overseas/international companies;
 - (iii) or seven (7) days following the date of any invoice given to the Client by Canberra Air for domestic Works.
 - 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Canberra Air.
 - 6.7 Canberra Air may in its discretion allocate any payment received from the Client towards any invoice that the Canberra Air determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Canberra Air may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Canberra Air, payment will be deemed to be allocated in such manner as preserves the maximum value of the Canberra Air's Purchase Money Security Interest (as defined in the PSPA) in the Materials.
 - 6.8 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 the Canberra Air except where the Client has a right to do so under law.
 - 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Canberra Air an amount equal to any GST the Canberra Air must pay for any supply by the Canberra Air under this or any other contract for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
 - 6.10 **Provision of the Works**
 - 6.11 Subject to clause 7.2 it is the Canberra Air's responsibility to ensure that the Works start as soon as it is reasonably possible.
 - 6.12 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Canberra Air claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Canberra Air's control, including but not limited to any failure by the Client to:
 - (a) make a selection; or
 - (b) have the Worksite ready for the Works; or
 - (c) notify the Canberra Air that the Worksite is ready.
 - 6.13 At the Canberra Air's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
 - 6.14 Any time specified by the Canberra Air for delivery of the Works is an estimate only and the Canberra Air will not be liable for any loss or damage incurred by the Client as a result of delivery being late to the extent permitted by law. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Canberra Air is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Canberra Air shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
 - 6.15 **Worksite Access and Condition**
 - 6.16 Canberra Air is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by the Canberra Air will be placed in a designated area appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed.
 - 6.17 It is the intention of the Canberra Air and agreed by the Client that:
 - (a) the Client shall ensure that the Canberra Air has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). Canberra Air shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) except to the extent caused by Canberra Air's negligence or otherwise required by law; and
 - (b) it is the Client's responsibility to provide the Canberra Air, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities.
 - 6.18 The Client agrees to be present at the Worksite when and as reasonably requested by the Canberra Air and its employees, contractors and/or agents.
 - 6.19 **Worksite Inductions**
 - (a) in the event the Client requires an employee or sub-contractor of the Canberra Air to undertake a Worksite induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to
 - 6.20 pay the Canberra Air's standard (and/or overtime, if applicable) hourly labour rate; or
 - 6.21 where the Canberra Air is in control of the Worksite, the Client and/or the Client's third party contractors must initially carry out the Canberra Air's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by the Canberra Air.
7. **Risk**
 - 7.1 If the Canberra Air retains ownership of the Materials under clause 13 then:
 - (a) where the Canberra Air is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
 - (i) the Client or the Client's nominated carrier takes possession of the Materials at the Canberra Air's address; or
 - (ii) the Materials are delivered by the Canberra Air or the Canberra Air's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where the Canberra Air is to both supply and install Materials then the Canberra Air shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
 - 7.2 Notwithstanding the provisions of clause 9.1 if the Client specifically requests the Canberra Air to leave Materials outside the Canberra Air's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
 - 7.3 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Act, Regulations and Code of Practice. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
 - 7.4 The final location of the wall, window or floor unit must be determined on site by the Client.
 - 7.5 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation as per clause 6.2 if the Client requests the unit to not be located adjacent to the external wall, due to the additional piping required. Canberra Air shall upon installation ensure that all installed Materials meet current industry standards applicable to noise levels, however Canberra Air cannot guarantee that noise levels will remain constant post installation as the Materials may be impacted by many factors such as the weather, lack of maintenance, tampering etc.
 - 7.6 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for the costs involved except to the extent the relocation is caused by Canberra Air's design, installation or negligence.
 - 7.7 The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage. In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify Canberra Air immediately upon any proposed changes. The Client agrees to indemnify Canberra Air against any additional costs incurred with such a relocation of electrical wiring. All such variations shall be invoiced in accordance with clause 6.2.
 - 7.8 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, cabling, pipes, etc.) are of suitable capacity to handle the Materials once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing, crawl spaces or inspection points), Canberra Air reasonably forms the opinion that the Client's premises is not safe for the installation of Materials to proceed then Canberra Air shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 7.2 above) until Canberra Air is satisfied that it is safe for the installation to proceed.
 - 7.9 The Client acknowledges that Canberra Air is only responsible for parts that are replaced by Canberra Air, and in the event that other parts/goods, subsequently fail, the Client agrees to indemnify Canberra Air against any loss or damage to the Materials (including, but not limited to, loss of perishables, flooding and/or damage to clothing). In the event:
 - (a) of a system failure caused by, including, but not limited to, a faulty compressor, condenser or evaporator fan motors, refrigerant loss, controls failure, Canberra Air shall not be responsible for loss of trade, damages including loss of perishables, or costs that arise from a system failure; and
 - (b) that existing electrical systems are found to be inadequate (or non-compliant) then the cost of upgrading the system will be treated as a variation and charged in accordance with clause 6.2.
 - 7.10 The Client acknowledges and agrees that where Canberra Air has performed temporary repairs that:
 - (a) Canberra Air offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) Canberra Air will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair.
 - 7.11 The Client acknowledges that Materials supplied may:
 - (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
 - 7.12 Canberra Air shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Canberra Air accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
8. **Specifications**
 - 8.1 The Client acknowledges that:
 - (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Canberra Air's or manufacturer's fact sheets, or advertising material, are approximate only and are given by way of identification only. The Client acknowledges that such information is provided as a guide only, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Canberra Air.
 - (b) while Canberra Air may have provided information or figures to the Client regarding the performance of the Materials, the Client acknowledges that Canberra Air has given these in good faith, and are estimates industry prescribed estimates and/or under optimal operating conditions.
 - 8.2 The Client shall be responsible for ensuring that the Materials ordered are suitable for their intended use.
9. **Underground Locations / Hidden Services**
 - 9.1 Prior to the Canberra Air commencing any work the Client must advise the Canberra Air of the precise location of all services on the Worksite and clearly mark the same. The mains and services the Client must identify include, but are not

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- limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Worksite.
- 11.2 Whilst the Canberra Air will take all care to avoid damage to any services the Client agrees to indemnify the Canberra Air in respect of liability claims, loss, damage, costs and fines to the extent arising from the Client's failure to comply with clause 11.1.
- 12. Compliance with Laws**
- 12.1 The Client and the Canberra Air shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any work health and safety laws (WHS) relating or any other relevant safety standards or legislation pertaining to the Works.
- 12.2 Both parties acknowledge and agree:
- (a) to comply with the National Construction Code of Australia (NCC) and the Building Act 2004 (ACT), or any equivalent legislation applicable in the jurisdiction where the Works are performed, in respect of all workmanship and building products to be supplied during the course of the Works; and
- (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 12.3 Where the Client has supplied products for the Canberra Air to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in Canberra Air's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with state and/or territory regulations, then Canberra Air shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced, after giving the Client written notice of the reason, and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.
- 12.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 13. Title**
- 13.1 Canberra Air and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid the Canberra Air all amounts owing to the Canberra Air; and
- (b) the Client has met all of its other obligations to the Canberra Air.
- 13.2 Receipt by the Canberra Air 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.
- 13.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 13.1:
- (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Canberra Air on request;
- (b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Canberra Air and must pay to the Canberra Air the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
- (c) the production of these terms and conditions by the Canberra Air shall be sufficient evidence of the Canberra Air's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Canberra Air to make further enquiries;
- (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Canberra Air and must pay or deliver the proceeds to the Canberra Air on demand;
- (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Canberra Air and must sell, dispose of or return the resulting product to the Canberra Air as it so directs;
- (f) unless the Materials have become fixtures the Client irrevocably authorises the Canberra Air to enter any premises where the Canberra Air believes the Materials are kept, to the extent permitted by law, and recover possession of the Materials;
- (g) the Canberra Air may recover possession of any Materials in transit whether or not delivery has occurred;
- (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Canberra Air;
- (i) the Canberra Air may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
- 14. Personal Property Securities Act 2009 ("PPSA")**
- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and/or collateral (account) – being a monetary obligation of the Client to the Canberra Air for Works – that have previously been supplied and that will be supplied in the future by the Canberra Air to the Client.
- 14.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Canberra Air may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 14.(i) or 14.(ii);
- (b) indemnify, and upon demand reimburse, the Canberra Air for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Canberra Air;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of the Canberra Air;
- (e) immediately advise the Canberra Air of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 14.4 Canberra Air and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 14.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by the Canberra Air, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Client shall unconditionally ratify any actions taken by the Canberra Air under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- Security and Charge**
- In consideration of the Canberra Air agreeing to supply the Materials, the Client charges its interest in the Materials and any proceeds of their sale to the extent necessary to secure payment of amounts owing under this Contract, and (where the Client is not a consumer within the meaning of the CCA) all of the Client's estate and interest in any real property owned by the Client now or in the future to the extent necessary to secure payment of amounts owing under this Contract, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The Client consents to the Canberra Air lodging a caveat over any real property charged under this clause, and the Canberra Air must withdraw any such caveat promptly once all amounts owing under this Contract have been paid.
- The Client indemnifies the Canberra Air from and against all the Canberra Air's costs and disbursements including legal costs on a solicitor and own client basis reasonably incurred in exercising the Canberra Air's rights under this clause.
- The Client irrevocably appoints the Canberra Air and each director of the Canberra Air as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf to the extent reasonably necessary to give effect to this clause.
- Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")**
- The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify the Canberra Air in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Canberra Air to inspect the Materials or to review the Works provided.
- Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- Canberra Air acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Canberra Air makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Canberra Air's liability in respect of these warranties is limited to the fullest extent permitted by law.
- If the Client is a consumer within the meaning of the CCA, the Canberra Air's liability is limited to the extent permitted by section 64A of Schedule 2.
- If the Canberra Air is required to replace any Materials under this clause or the CCA, but is unable to do so, the Canberra Air may refund any money the Client has paid for the Materials.
- If the Canberra Air is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then the Canberra Air may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of the Works and Materials which have been provided to the Client which were not defective.
- If the Client is not a consumer within the meaning of the CCA, the Canberra Air's liability for any defect or damage in the Materials is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Canberra Air at the Canberra Air's sole discretion;
- (b) limited to any warranty to which the Canberra Air is entitled, if the Canberra Air did not manufacture the Materials;
- (c) otherwise excluded to the fullest extent permitted by law.
- Subject to this clause 16, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 16.1; and
- (b) the Canberra Air has agreed that the Materials are defective; and
- (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- Notwithstanding clauses 16.1 to 16.9 but subject to the CCA, the Canberra Air shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Materials;
- (b) the Client using the Materials for any purpose other than that for which they were designed;
- (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) interference with the Works by the Client or any third party without the Canberra Air's prior approval;
- (e) the Client failing to follow any instructions or guidelines provided by the Canberra Air;
- (f) fair wear and tear, any accident, or act of God.
- Canberra Air may in its absolute discretion accept non-defective Materials for return in which case the Canberra Air may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Materials plus any freight costs.
- Notwithstanding anything contained in this clause if the Canberra Air is required by a law to accept a return then the Canberra Air will only accept a return on the conditions imposed by that law.
- Intellectual Property**
- Where the Canberra Air has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Canberra Air, and shall only be used by the Client with Canberra Air's written consent. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Canberra Air.
- The Client warrants that all designs, specifications or instructions given to the Canberra Air will not cause the Canberra Air to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Canberra Air against any action taken by a third party against the Canberra Air in respect of any such infringement.
- The Client agrees that the Canberra Air may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Canberra Air has created for the Client provided that any confidential information of the Client is not disclosed without the Client's consent.
- Default and Consequences of Default**
- Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at the rate of interest payable on the unpaid amount of a progress payment under the security of payment legislation applicable to the Works, being the Building and Construction Industry Security of Payment Act 1999 (NSW) or the Building and Construction Industry (Security of Payment) Act 2009 (ACT).
- If the Client owes the Canberra Air any money the Client shall indemnify the Canberra Air from and against all costs and disbursements reasonably incurred by the Canberra Air in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Canberra Air's contract default fee, and bank dishonour fees).
- Further to any other rights or remedies the Canberra Air may have under this Contract, if a Client has made payment to the Canberra Air, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Canberra Air under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- Without prejudice to the Canberra Air's other remedies at law the Canberra Air shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Canberra Air shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Canberra Air becomes overdue, or Canberra Air reasonably believes the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by the Canberra Air;
- (c) the Client becomes insolvent or bankrupt, 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 19. Cancellation**
- 19.1 Without prejudice to any other remedies the Canberra Air may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Canberra Air may suspend or terminate the supply of Works to the Client. Canberra Air will not be liable to the Client for any loss or damage the Client suffers because the Canberra Air has exercised its rights under this clause, except to the extent liability cannot be excluded by law.
- Canberra Air may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Canberra Air shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Canberra Air for Works already performed. Canberra Air shall not be liable for any loss or damage whatsoever arising from such cancellation, except to the extent liability cannot be excluded by law.
- In the event that the Client cancels the delivery of Works the Client shall be liable for loss reasonably incurred (whether direct or indirect) by the Canberra Air as a direct result of the cancellation (including, but not limited to, any loss of profits).
- Cancellation of orders for products made to the Client's specifications, or for non-stock items, will not be accepted once production has commenced, or an order has been placed.
- 20. Privacy Policy**
- 20.1 All emails, documents, images or other recorded information held or used by the Canberra Air is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. Canberra Air acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB). Canberra Air acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Canberra Air that may result in serious harm to the Client, the Canberra Air will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to the Canberra Air in respect of Cookies where the Client utilises the Canberra Air's website to make enquiries. Canberra Air agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to the Canberra Air when the Canberra Air sends an email to the Client, so the Canberra Air may collect and review that information ("collectively Personal Information").
- If the Client consents to the Canberra Air's use of Cookies on the Canberra Air's website and later wishes to withdraw that consent, the Client may manage and control the Canberra Air's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- The Client agrees for the Canberra Air to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Canberra Air.
- The Client agrees that the Canberra Air may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- The Client consents to the Canberra Air being given a consumer credit report to collect overdue payment on commercial credit.
- The Client agrees that personal credit information provided may be used and retained by the Canberra Air for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (d) enabling the collection of amounts outstanding in relation to the Works.
- Canberra Air may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- The information given to the CRB may include:
- (a) Personal Information as outlined in 20.3 above;
- (b) name of the credit provider and that the Canberra Air is a current credit provider to the Client;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults (provided the Canberra Air is a member of an approved external dispute resolution scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Canberra Air has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of the Canberra Air, the Client has committed a serious credit infringement;

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- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.9 The Client shall have the right to request (by e-mail) from the Canberra Air:
- a copy of the Personal Information about the Client retained by the Canberra Air and the right to request that the Canberra Air correct any incorrect Personal Information; and
 - that the Canberra Air does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 20.10 Canberra Air will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.11 The Client can make a privacy complaint by contacting the Canberra Air via e-mail. Canberra Air will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at the Office of the Australian Information Commissioner (OAIC).
- 21. Unpaid Seller's Rights**
- 21.1 Where the Client has left any item with the Canberra Air for repair, modification, exchange or for the Canberra Air to perform any other service in relation to the item and the Canberra Air has not received or been tendered the whole of any monies owing to it by the Client, the Canberra Air shall have, until all monies owing to the Canberra Air are paid:
- a lien on the item; and
 - the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 21.2 The lien of the Canberra Air shall continue despite the commencement of proceedings, or judgment for any monies owing to the Canberra Air having been obtained against the Client.
- 22. Service of Notices**
- 22.1 Any written notice given under this Contract shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
 - by leaving it at the address of the other party as stated in this Contract;
 - by sending it by registered post to the address of the other party as stated in this Contract;
 - if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 23. Trusts**
- 23.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Canberra Air may have notice of the Trust, the Client covenants with the Canberra Air as follows:
- the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - the Client will not without consent in writing of the Canberra Air (the Canberra Air will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - the removal, replacement or retirement of the Client as trustee of the Trust;
 - any alteration to or variation of the terms of the Trust;
 - any advancement or distribution of capital of the Trust; or
 - any resettlement of the trust property.
- 24. Other Applicable Legislation**
- 24.1 The provisions of the Building and Construction Industry Security of Payment Act 1999 (NSW) and the Building and Construction Industry (Security of Payment) Act 2009 (ACT) apply to any disputes or claims for unpaid Materials and/or Works to the extent provided by these Acts.
- 24.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of any of the Acts listed in clause 24.1 (each as applicable), except to the extent permitted by the Act where applicable.
- 24.3 To the extent that the Works are residential building work within the meaning of the Home Building Act 1989 (NSW), or the Building Act 2004 (ACT) applies to the Works, the requirements of that legislation (including any statutory warranties and any limits on deposits and progress payments) apply to this Contract and prevail over these terms and conditions to the extent of any inconsistency, and nothing in these terms and conditions excludes, restricts or modifies those requirements.
- 25. General**
- 25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the Australian Capital Territory, and the parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.
- 25.3 Subject to clause 16, the Canberra Air 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 the Canberra Air of these terms and conditions except to the extent liability cannot be excluded by law.
- 25.4 Canberra Air may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.5 The Client cannot assign or otherwise transfer its rights or obligations without the prior written approval of the Canberra Air.
- 25.6 Canberra Air may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Canberra Air's sub-contractors without the authority of the Canberra Air.
- 25.7 The Client agrees that the Canberra Air may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect in respect of future Contracts entered into after the Client has received notice of the amended terms.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 25.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.