

SR Engineering Australia Pty Ltd
Trading As – Artisan Air
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Terms of Trade

1. Definitions

1.1 **“Contractor”** shall mean Artisan Air its successors and assigns or any person acting on behalf of and with the authority of Artisan Air

1.2 **“Customer”** shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Contractor to the Customer.

1.3 **“Guarantor”** means that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.

1.4 **“Goods”** shall mean all Goods supplied by the Contractor to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Contractor to the Customer.

1.5 **“Equipment”** shall mean all Equipment including any accessories supplied on hire by the Contractor to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Contractor to the Customer.

1.6 **“Services”** shall mean all Services supplied by the Contractor to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

1.7 **“Price”** shall mean the Price payable for the Goods as agreed between the Contractor and the Customer in accordance with clause 4 of this contract.

2. The Competition and Consumer Act 2010 (“CCA”) and Fair Trading Acts (“FTA”)

2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

2.2 Clause 10 (Defects) and clause 11 (Warranty) may **NOT** apply to the Customer where the Customer is purchasing Goods or Services not for resale or hire where the Price of the Goods or Services does not exceed **\$40,000**, or where the Price of the Goods or Services does exceed **\$40,000** and are of a kind ordinarily acquired for personal, domestic or household use or consumption, or where the Customer is in any other way a consumer within the meaning of the CCA or the FTA of the relevant state or territories of Australia.

3. Acceptance

3.1 Any instructions received by the Contractor from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Contractor shall constitute acceptance of the terms and conditions contained herein.

3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.

3.3 The Customer will be liable for all recovery costs if the customer is overdue with the total payment.

3.4 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Contractor.

3.5 The Customer shall give the Contractor not less **than fourteen (14) days** prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer's failure to comply with this clause.

3.6 Goods are supplied by the Contractor only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

3.7 The Contractor has the right to change the quotation if the Customer makes any adjustments to the job in question.

4. Price and Payment

4.1 At the Contractor's sole discretion the Price shall be either:

(a) as indicated on invoices provided by the Contractor to the Customer in respect of Goods supplied; or

(b) the Contractor's quoted Price (**subject to clause 4.2**) which shall be binding upon the Contractor provided that the Customer shall accept the Contractor's quotation in writing within **thirty (30) days**.

4.2 The Contractor reserves the right to change the Price in the event of a variation to the Contractor's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances such as changes on site, or as a result of increases to the Contractor in the cost of materials and labour) will be charged for on the basis of the Contractor's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

4.3 At the Contractor's sole discretion a deposit may be required.

4.4 At the Contractor's sole discretion:

(a) payment shall be due on completion of the Goods; or

(b) payment for approved Customers shall be made by instalments in accordance with the Contractor's payment schedule; or

(c) payment for approved Customers shall be **due between 7 and thirty (30) days** from date of invoice.

4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be **due on invoice**.

4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card or by direct credit, or by any other method as agreed to between the Customer and the Contractor.

4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4.8. Suspension in default of payment. Without prejudice to any other rights of the Contractor, where The Client fails to make any payments due hereunder on the due dates, the Contractor shall be entitled to suspend the works until payment is made and if default continues for a period of **seven (7) days** thereafter. The Contractor shall be entitled to determine the contract and in addition to any other rights which

may be conferred upon him at law or at equity shall be paid for work and labour done and materials supplied to the date of the suspension.

4.9. Completion and delays:

(a) the Contractor agrees to complete all works authorised in a good and workmanlike manner as soon as is reasonably practicable:

(i) whether or not a definite date for completion has been quoted shall not be responsible for any delay in completion,

(ii) or damage occasioned directly or indirectly by weather conditions, labour disputes, accidents, fire, Act of God, Civil Riots, shortages or material or difficulty of securing labour or any other cause beyond the reasonable and practicable control of The Contractor.

5. Delivery of Goods

5.1 At the Contractor's sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by the Contractor or the Contractor's nominated carrier).

5.2 At the Contractor's sole discretion the costs of delivery are:

(a) included in the Price; or

(b) for the Customer's account.

5.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery.

5.4 The Contractor may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.5 The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.

5.6 The Contractor shall not be liable for any loss or damage whatsoever due to failure by the Contractor to deliver the Goods (or any of them) promptly or at all where due to circumstances beyond the control of the Contractor.

6. Risk

6.1 If the Contractor retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.

6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.

6.3 Where the Customer expressly requests the Contractor to leave Goods outside the Contractor's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.

7. Title

7.1 The Contractor and the Customer agree that ownership of the Goods shall not pass until:

(a) the Customer has paid the Contractor all amounts owing for the particular Goods; and

(b) the Customer has met all other obligations due by the Customer to the Contractor in respect of all contracts between the Contractor and the Customer.

7.2 Receipt by the Contractor 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 and until then the Contractor's ownership or rights in respect of the Goods shall continue.

7.3 It is further agreed that:

(a) where practicable the Goods shall be kept separate and identifiable until the Contractor shall have received payment and all other obligations of the Customer are met; and

(b) until such time as ownership of the Goods shall pass from the Contractor to the Customer the Contractor may give notice in writing to the Customer to return the Goods or any of them to the Contractor. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and

(c) the Contractor shall have the right of stopping the Goods in transit whether or not delivery has been made; and

(d) if the Customer fails to return the Goods to the Contractor then the Contractor or the Contractor's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods; and

(e) the Customer is only a Bailee of the Goods and until such time as the Contractor has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Contractor for the Goods, on trust for the Contractor; and

(f) the Customer shall not deal with the money of the Contractor in any way which may be adverse to the Contractor; and

(g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Contractor; and

(h) the Contractor can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and

(i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Contractor will be the owner of the end products.

8. Personal Property Securities Act 2009 ("PPSA")

8.1 In this clause:

(a) financing statement has the meaning given to it by the PPSA;

(b) financing change statement has the meaning given to it by the PPSA;

(c) security agreement means the security agreement under the PPSA created between the Customer and the Contractor by these terms and conditions.

8.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions:

(a) constitute a security agreement for the purposes of the PPSA; and

(b) create a security interest in:

(i) all Goods previously supplied by the Contractor to the Customer (if any);

(ii) all Goods that will be supplied in the future by the Contractor to the Customer.

8.3 The Customer 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 Contractor 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 8.3(a)(i) or 8.3(a)(ii);

(b) indemnify, and upon demand reimburse, the Contractor 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 Goods charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Contractor; and

(e) Immediately advise the Contractor of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

8.4 The Contractor and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

8.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3), (d) and 132(4) of the PPSA.

8.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

8.7 Unless otherwise agreed to in writing by the Contractor, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

8.8 The Customer shall unconditionally ratify any actions taken by the Contractor under clauses 8.3 to 8.5.

8.9 The Contractor has the right to register the Customer on the PPSA.

9. Security and Charge

9.1 Despite anything to the contrary contained herein or any other rights which the Contractor may have howsoever:

(a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer 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 Contractor or the Contractor's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Contractor (or the Contractor's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

(b) should the Contractor elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Contractor or the Contractor's nominee as the

Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 9.1.

10. Defects

10.1 The Customer shall inspect the Goods on delivery and shall within **three (3) days** of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote.

(a) The Customer shall afford the Contractor an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage.

(b) For defective Goods, which the Contractor has agreed in writing that the Customer is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the **Competition and Consumer Act 2010** (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.

10.2 Goods will not be accepted for return other than in accordance with 10.1 above.

11. Warranty

11.1 To the extent permitted by statute, no warranty is given by the Contractor as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Contractor shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

12. Default and Consequences of Default

12.1 An Interest rate of 21.9% on overdue invoices shall **accrue seven (7) days** from the date when payment becomes due, until the date of payment (and at the Contractor's sole discretion such interest shall compound weekly at such a rate) after as well as before any judgment.

12.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Contractor.

12.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in pursuing the debt including legal costs on a solicitor and own client basis and the Contractor's collection agency costs.

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

12.5 If any account remains overdue **after thirty (30) days** then an amount of the greater of twenty dollars (**\$20.00**) or **ten percent (10%)** of the amount overdue (up to a maximum of two hundred dollars (**\$200.00**)) shall be levied for administration fees which sum shall become immediately due and payable. This excludes statement on 12.1.

12.6 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

13. Cancellation

13.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Contractor shall repay to the Customer any sums paid in respect of the Price. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.

13.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Contractor (including, but not limited to, any loss of profits) up to the time of cancellation.

13.3 Cancellation of orders for Goods made to the Customer's specifications or non-stock list items will definitely not be accepted, once production has commenced.

14. Privacy Act 1988

14.1 The Customer and/or the Guarantor/s (herein referred to as the Customer) agree for the Contractor to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Contractor.

14.2 The Customer agrees that the Contractor may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer.

The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

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

14.4 The Customer agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other purposes as shall be agreed between the Customer and Contractor or required by law from time to time):

- (a) the provision of Goods; and/or
- (b) the marketing of Goods by the Contractor, its agents or distributors; and/or

- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

14.5 The Contractor may give information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

14.6 The information given to the credit reporting agency may include:

- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
- (c) advice that the Contractor is a current credit provider to the Customer;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more **than sixty (60) days**, and for which debt collection action has been started;
- (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of the Contractor, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
- (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Customer by the Contractor has been paid or otherwise discharged.

15. Construction Contracts Act 2004

15.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts Act 2004 may apply.

15.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.

16. Equipment Hire

16.1 The Equipment shall at all times remain the property of the Contractor and is returnable on demand by the Contractor. In the event that the Equipment is not returned to the Contractor in the condition in which it was delivered the Contractor retains the right to charge the Customer the full cost of repairing the Equipment. In the event Equipment is not returned at all the Contractor shall have right to charge the Customer the full cost of replacing the Equipment.

16.2 The Customer shall;

- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
- (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.

(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Contractor to the Customer.

16.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self-insure, the Contractor's interest in the Equipment and agrees to indemnify the Contractor against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

17. General

17.1 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.

17.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.

17.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.

17.4 The Contractor shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Contractor of these terms and conditions.

17.5 In the event of any breach of this contract by the Contractor the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.

17.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.

17.7 The Contractor may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

17.8 The Customer agrees that the Contractor may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Customer of such change. The Customer shall be under no obligation to accept such changes except where the Contractor supplies further Goods to the Customer and the Customer accepts such Goods.

17.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

17.10 The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision.