

TERMS AND CONDITIONS OF SALE

1. Acceptance of Terms & Conditions

The Customer hereby engages A J Baker & Sons Pty Ltd to provide goods and/or services in accordance with the terms and conditions as set out in this document ("terms and conditions" or "agreement").

The placement of an order with A J Baker & Sons Pty Ltd by the Customer on any basis shall be deemed to be an acceptance of these Terms & Conditions by the Customer.

The definitions in Clause 23 define some of the terms used in these Terms & Conditions.

2. Standard Terms of Payment

A deposit of 40% of the purchase price is required to be paid with the order and the balance shall be paid to A J Baker & Sons at the time of delivery of the goods unless otherwise agreed in writing by the Company. A J Baker & Sons shall charge interest at the rate of 1.5 per centum per calendar month on any overdue amount. An amount shall be overdue if it is not paid in accordance with the above terms or at such other time as agreed in writing by A J Baker & Sons. Customers are not entitled to withhold payment of any account by reason of any account query or dispute. The Customer agrees to pay A J Baker & Sons administration fees in respect of any copies of documents required or other processing involved in managing the account and such fees will be charged to the Customer's account.

Customers can elect to use a credit card (either Visa, MasterCard or American Express Card only) to make payment for the goods and/or services.

3. Rise and Fall

All tender prices shall remain firm for a period of 30 days from date of submission, unless stated otherwise on the tender submission document. Following this time period the tender price is subject to review. All contracts accepted by A J Baker and Sons are tendered on the basis the contract starting date and completion dates are within reasonable industry standard scheduling or unless agreed in writing at time of contract acceptance. Should contract start dates or general construction time be delayed by factors outside of A J Baker & Sons' control, material price variations and administration costs associated with the control of the contract may be charged to the Customer's account to cover all additional material costs and expenses incurred.

4. Retention of Title

The parties agree that:

- a) The risk of Services and goods will pass immediately to the Customer upon delivery by A J Baker & Sons;
- b) Legal or equitable property in the goods shall not pass from A J Baker & Sons to the Customer until all goods and/or services supplied (including any labour and installation charges, interest and / or recovery costs) have been paid in full by the customer.
- c) Until payment has been made in full the Customer holds all such goods delivered by A J Baker & Sons as Bailee for the Company and shall safely and securely store all such goods.
- d) If payment is not made on or before the due date the Customer shall, at A J Baker & Sons' request, deliver up all such goods not fully paid for and failing delivery of same A J Baker & Sons is irrevocably authorised to enter, at any time, by its servants or agents at the place where the goods are situated and repossess the goods and remove the goods from any place regardless of whether the goods have become fixtures to any premises.
- e) The Customer indemnifies A J Baker & Sons against all losses and costs incurred by it in removing any such goods and against all claims against the Company arising from such removal.
- f) The Customer shall be responsible for A J Baker & Sons' costs and expenses in exercising its rights under clause 4(d).
- g) The Customer shall not charge the goods in any way nor give any interest in the goods while they remain property of A J Baker & Sons.
- h) If the Customer is purchasing the goods ordered above for resale the Customer will provide A J Baker & Sons with the name and address of the purchaser and the Customer will put that Purchaser on notice that A J Baker & Sons retains property in the goods until it has been paid in full. Any monies received for the goods by the Customer from such resale will be held by the Customer on trust for A J Baker & Sons.
- i) A J Baker & Sons may issue proceedings to recover all outstanding indebtedness to A J Baker & Sons in respect of the Goods or any other amounts owing to A J Baker & Sons notwithstanding that ownership may have passed to the Customer.

5. Security & Charge

- a) To secure the payment of all amounts owed by the Customer to A J Baker & Sons and the performance by the Customer of each and every obligation owed by it to A J Baker & Sons under these Terms and Conditions, the Customer hereby grants to A J Baker & Sons and A J Baker & Sons hereby takes from the Customer a Security Interest in the goods sold to the Customer pursuant to these Terms and Conditions.
- b) The Customer may sell or deal in the ordinary course of business with the goods and with the interest of A J Baker & Sons in the goods and may for those purposes part with possession of the goods but the proceeds of any such sale or dealing must be held by the Customer on trust for A J Baker & Sons and appropriated solely for the payment of all sums owing to A J Baker & Sons.
- c) Whilst A J Baker & Sons retains the legal and equitable title in the goods the Customer shall ensure that the Goods are clearly identifiable as the exclusive property of A J Baker & Sons wherever the Goods are stored.

6. PPSA

- a) If Chapter 4 of the Personal Property Securities Act 2011 (Cth) ("PPSA") does apply to the enforcement of a Security Interest arising under or in connection with these terms and conditions, the Customer agrees the following provisions of the PPSA will not apply to the enforcement of that Security Interest ("Security Interest" has the same meaning as under the PPSA):
 - i. section 95 (notice of removal of accession), to the extent that it requires A J Baker & Sons to give the Customer a notice;
 - ii. section 96 (when a person with an interest in the whole may retain accession);
 - iii. subsection 121(4) (enforcement of liquid assets – notice to grantor);
 - iv. section 125 (obligation to dispose of or retain collateral);
 - v. section 130 (notice of disposal), to the extent that it requires A J Baker & Sons to give the Customer a notice;
 - vi. paragraph 132(3)(d) (contents of statement of account after disposal);
 - vii. subsection 132(4) (statement of account if no disposal);
 - viii. section 142 (redemption of collateral);
 - ix. section 143 (reinstatement of security agreement)
- b) Where a person is a controller in relation to the goods, the parties agree that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the goods by that controller.
- c) Despite Clause 2(p) of the PPSA, notices or documents required or permitted to be given to A J Baker & Sons for the purposes of the PPSA must be given in accordance with the PPSA.
- d) The Customer consents to A J Baker & Sons effecting a registration on the PPSR (in any manner A J Baker & Sons considers appropriate) in relation to any Security Interest arising under or in connection with these Terms and Conditions and the Customer agrees to provide all assistance reasonably required by A J Baker & Sons to facilitate this.
- e) The Customer waives its right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- f) The Customer acknowledges that if A J Baker & Sons' interest under these Terms and Conditions is a Security Interest for the purposes of the PPSA:
 - i. that Security Interest relates to the Goods and all Proceeds of any kind; and
 - ii. these Terms and Conditions document is a security agreement for the purposes of the PPSA.

7. Other Terms and Conditions of Sale

The Customer acknowledges that A J Baker & Sons has agreed to supply the goods or services subject to the above Terms and Conditions which the Customer acknowledges form part of the Contract of Sale of the above goods.

8. Prices

- a) Prices quoted do not include delivery costs unless expressly otherwise stated.
- b) Such prices as quoted are based on the cost of labour and materials at the date of the quotation and shall be subject to adjustment if such prices vary between the date of quotation and the date that A J Baker & Sons incurs such costs if any such variation is beyond the control of A J Baker & Sons.

9. Asbestos Handling

Unless specifically incorporated into the quotation, all activities associated with the removal and disposal of asbestos or asbestos products at the Customer site are excluded. A J Baker & Sons is not registered to remove or dispose of asbestos and consequently cannot undertake these activities. If asbestos is present A J Baker & Sons will withdraw its employees from the work site until it has received certification that it has been appropriately removed and the site is safe.

10. Delivery Time

A J Baker & Sons shall not be liable for any delay or loss arising from late delivery or installation, and tendered dates for delivery and installation are only best estimates.

11. Cancellation or Postponement

- a) Standard Goods - The Customer shall not be entitled to cancel any accepted order or part order unless agreed in writing by A J Baker & Sons. In any event, A J Baker & Sons shall be entitled to demand and receive a cancellation fee of 20% of the value of the order cancelled or such other sum as A J Baker may agree in writing in consideration of accepting any cancellation.
- b) Specialised Manufactured Goods - The Customer shall not be entitled to cancel any accepted order or part order for specialised, specific manufactured goods. A J Baker & Sons shall be entitled to demand full payment for any cancellation of specialised goods manufactured to order.
- c) If works do not commence in line with timetables provided to A J Baker & Sons for the purposes of quotation and less than four weeks' notice is provided to enable A J Baker & Sons to amend the delivery dates of contract components then the costs of this postponement will be calculated and charged as a variation to the contract.
- d) Once the works have commenced, should the works not be able to be carried out on a continuous basis due to inclement weather, delays by other trades, parts of the work site not being ready or accessible or for any delays whatsoever then the delay costs will be calculated and charged as a variation to the contract. Should A J Baker & Sons technicians have to leave the site and then return again for any of the above reasons then the costs associated with site establishment and relocation will be calculated and charged as a variation to the contract.

12. Goods and Services Taxes (GST)

The prices quoted by A J Baker & Sons do not include GST or any other statutory charge, duty, tax, impost or levy ("Other Taxes"), unless expressly stated otherwise. If GST and/or Other Taxes apply in relation to a supply of goods or installation services by A J Baker & Sons to the Customer, the Customer must (unless the price quoted includes GST and/or Other Taxes) pay the applicable GST and/or Other Taxes to A J Baker & Sons in addition to the price quoted to the Customer. Where GST is payable, it will be calculated by multiplying the quoted price by the prevailing GST rate.

13. Installation

- a) The Company has assumed that all information required to complete the contract will be made available to A J Baker & Sons in the required format on request. Additional costs and/or contract delays will be applicable should this information not be provided in a timely manner.
- b) At the Customer's request, A J Baker & Sons agrees to use reasonable endeavours to provide information to the Customer or such third party or parties as the Customer may direct to assist with BCA approvals. However, A J Baker & Sons accepts no responsibility or liability in respect of BCA approvals in accordance with Clause 16 of these Terms and Conditions. The Customer agrees to pay to A J Baker & Sons on demand any costs incurred by A J Baker & Sons as a result of providing information in accordance with this Clause 13(b).
- c) If A J Baker & Sons is required to provide any form of installation, the Customer shall be liable for arranging and supplying electricity, water, gas and any other services required for that installation at the expense of the Customer.
- d) Installation costs quoted are based on continuous access during normal tradesperson's hours and any delays in access will entitle A J Baker & Sons to charge for and recover all additional costs, expenses or charges incurred as a result of such delay.
- e) The Company has assumed clear access through the building for pipe work and services installation as indicated. Restricted access may inhibit installation, additional installation charges may apply.
- f) Should final system calculations result in component upgrades to meet specified duties, additional costs will apply.
- g) The quotation does not include any free service, or service agreements unless expressly specified. Should the Customer require a Service Agreement, a separate contract may be entered into by A J Baker & Sons.

14. Guarantee

- a) If the Customer (or in the case where the Customer is a trust, the trustee) is a Corporation A J Baker & Sons agrees to supply goods to that corporation on the condition that the directors of the corporation hereby guarantee all liabilities of the Customer to A J Baker & Sons. This guarantee may be enforced at any time by A J Baker & Sons and in the event that A J Baker & Sons requires a separate guarantee from the Customer's directors the directors will execute same at the request of A J Baker & Sons.
- b) If the Customer is the trustee of a trust A J Baker & Sons agrees to supply goods to that trustee on the condition that the trustee hereby guarantees all liabilities of the Customer to A J Baker & Sons. This guarantee may be enforced at any time by A J Baker & Sons and in the event that A J Baker & Sons requires a separate guarantee from multiple individual trustees the trustees will execute same at the request of A J Baker & Sons.

15. Warranty

- a) For the avoidance of doubt, any warranty given by A J Baker & Sons in the terms and conditions may vary depending on the Goods supplied and the Services provided, with such variations to be in accordance with this Clause 15 or as otherwise notified to the Customer by A J Baker & Sons. Any warranty provided in these Terms and Conditions may only be varied and/or modified by A J Baker & Sons in writing.

No warranty work can be carried out by a third party without the express written approval of A J Baker & Sons.

i. Supply Only:

Any warranty expressed herein is offered subject to the equipment having been installed and operated in the correct manner. Goods purchased by A J Baker & Sons and resold to the Customer shall carry the manufacturer's warranty against defects in materials and workmanship. Where manufacturer's warranty includes labour, any request for attendance outside of normal business hours, outside major capital city metropolitan areas, or on weekends and public holidays is excluded, unless otherwise stated.

A J Baker & Sons requires any defective part to be returned, transportation pre-paid to establish the warranty claim. The specific unit serial number, date of purchase and date of installation must also be supplied at this time. If faulty parts are not returned within thirty (30) days of the replacement part being supplied the new part and any transportation costs will be charged.

Any part supplied as a replacement will be covered for a maximum warranty period of ninety (90) days or until the completion of the normal warranty period, whichever expires last.

ii. Supply and Install:

Any warranty expressed herein is offered subject to the equipment having been operated in the correct manner. A J Baker & Sons will provide twelve (12) months warranty service from the date of installation on all new goods and equipment within the context of the part manufacturer's warranty. Warranty will include free repair or replacement of faulty parts and during business hours labour only for repairing or replacing such faulty parts.

This warranty shall not extend to travel time or travel expenses outside major city metropolitan areas, replacement of electric lighting of any type, any glass component broken or damaged after or during delivery nor any damage of any nature caused by misuse, abuse or impact by any person or object or as a result of supply power faults. The warranty excludes any request for attendance outside of normal business hours including weekends and public holidays unless otherwise stated.

Any part supplied as a replacement will be covered for a maximum warranty period of ninety (90) days or until the completion of the normal warranty period, whichever expires last.

iii. A J Baker & Sons Manufactured:

Any warranty expressed herein is offered subject to the equipment having been installed and operated in the correct manner. A J Baker & Sons warrants the manufactured product for a period of a full twelve (12) months against all defects in materials and / or factory workmanship from the date of manufacture subject to the equipment being transported, installed and operated in the appropriate manner using acceptable Industry standards, and by following any specific installation instructions. This warranty excludes the labour involved in replacing any faulty component, and / or damage caused through misuse and abuse. Fluorescent lighting and all glass replacement is also excluded.

A J Baker & Sons requires the defective part to be returned, transportation pre-paid to establish the warranty claim. The specific unit serial number, the date of purchase and the date of installation must also be supplied at this time. If faulty parts are not returned with thirty (30) days of the replacement part being supplied the new part and any transportation costs will be charged.

iv. Second Hand:

Unless otherwise stated any used goods (second hand) sold by A J Baker & Sons whether manufactured by A J Baker & Sons or some other person or company, shall have parts only warranty for a period of thirty (30) days only against defective parts. This excludes any labour required to replace faulty parts or any labour to make repairs and rectify the equipment unless otherwise stated.

A J Baker & Sons shall have the option of requiring the return of the defective part, transportation pre-paid to establish the warranty claim. The specific unit serial number, the date of purchase and the date of installation must also be supplied at this time. If faulty parts are not returned with thirty (30) days of the replacement part being supplied the new part and any transportation costs will be charged.

Any part supplied as a replacement will be covered for a maximum warranty period of ninety (90) days or until the completion of the normal warranty period whichever expires last.

- b) To the extent permitted by law all implied conditions and warranties are expressly excluded.
- c) A J Baker & Sons will not be liable in respect of any claims for parts damaged in transport, misused by the Customer or its authorised parties, incorrectly installed.
- d) Warranty does not cover goods which have been subject to misuse, neglect, unauthorised alteration, incorrect installation, power surges, accident, use of inappropriate chemicals for cleaning, flooding, fire or acts of God.
- e) Warranty does not cover loss of profits or damage to other equipment.
- f) Nothing in these Terms and Conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting, modifying any condition, warranty guarantee right or remedy implied by law (including the Competition and Consumer Act 2010 (Cth) which by law cannot be excluded, restricted or modified.

16. Liability

- a) To the maximum extent permitted by law under no circumstance will A J Baker & Sons, its employees and/or agents be liable to the Customer for any indirect, incidental, special or consequential damages of any kind including without limitation, damages for loss of business or other profits arising out of or referable to these Terms and Conditions or any act done or admitted to be done under or by reason of these terms and conditions whether caused by the negligence or breach of statutory duty by A J Baker & Sons or otherwise.
- b) Subject to Clauses 15, 16(a) and 16(e), the Customer is liable for and indemnifies A J Baker & Sons against all liabilities, claims, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis determined without taxation, assessment or similar process and whether incurred or awarded on against A J Baker & Sons) arising from or incurred in connection with the Customer's use of the Goods or in respect of provision of the Services. Each indemnity under these Terms and Conditions is a continuing obligation, separate and independent from the Customer's other obligations and survives termination and completion of the purchase of the Goods and/or the provision of the Services.
- c) Subject to Clauses 15, 16(a) and 16(e), the Customer shall indemnify A J Baker & Sons for any loss, damage or expense incurred by A J Baker & Sons, to the maximum extent permitted by law, for any breach of these Terms and Conditions by the Customer.
- d) Notwithstanding any of the above, Goods sold to consumers as defined under section 3(2) of the Australian Consumer Law (as contained in the CCA) come with guarantees that cannot be excluded under the Australian Consumer Law. If the Customer is such a consumer:
 - i. It is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable damage; and
 - ii. It is also permitted to have the Goods repaired if the Goods fail to be of an acceptable quality and the failure does not amount to a major failure.

This warranty against defects is given in addition to other rights and remedies of the Customer at law.

- e) The liability of A J Baker & Sons to the Customer for a breach of a condition or warranty implied by law which cannot be excluded is limited to the extent possible subject to warranties contained in Clause 15 above and A J Baker & Sons' option (at its absolute discretion) to:
 - i. The supply of the Goods or the Services again; or
 - ii. The repair or rectification of the Goods or the Services; or
 - iii. The payment of the cost of having the Services of Goods supplied again or repaired

17. Applicable Law

These Terms and Conditions shall be governed by the laws of the State of Western Australia or such other jurisdiction as may be agreed by A J Baker & Sons.

18. Climate Class

Store conditions for the operation of A J Baker & Sons supplied refrigeration equipment.

A J Baker & Sons refrigerated cabinets are designed and tested to successfully operate at the following standard:

Climate Class 3

This Climate Class means that the unit is designed to operate successfully when installed in an environment of ambient air conditions within the following range:

-) Dry Bulb Temperature of 25 Degrees Celsius
-) Relative Humidity of 60%, and
-) 0.2 cubic metres air flow around case. (Tolerance: plus or minus 1 Degree Celsius of temperature and 3 units of humidity)

19. Guarantee

If a guarantee has been given in favour of A J Baker & Sons by persons associated with the Customer then the "terms" referred to in that guarantee are these terms.

20. Severance

If any provision or part of any provision of these Terms and Conditions is unenforceable it shall be severed from these Terms and Conditions and such severance or unenforceability shall not affect any other part or provision hereof.

21. Force Majeure

A J Baker & Sons shall not be liable for non-fulfilment or late delivery should actual delivery of the Goods or any parts be delayed in consequence of unforeseen events such as strikes, unforeseen breakdown of machinery (save where caused by improper maintenance or operation by untrained personnel), suspension of electricity or other relevant power supply, riots, war, robbery, civil commotion, adverse non foreseeable weather conditions, disaster caused by fire and/or water, action of government or port authority, delay of vessel, rail-road embargoes, inability to obtain transportation facilities or due to a failure of an original equipment manufacturer to supply components by the due date.

22. Complete Agreement

The Terms and Conditions contained in this order being the Contract of Sale for the goods described herein are the entire terms between the parties in respect of this agreement unless subsequently varied or modified in writing.

23. Definitions

In these Terms and Conditions:

- "**BCA codes**" means the Building Code of Australia, being Volume 1 and 2 of the National Construction Code or any code, act or regulation pursuant to or associated with or amending or replacing that code;
- "**A J Baker & Sons**" or the "**Company**" means A.J. Baker & Sons Pty Ltd ACN 008 734 834;
- "**Customer**" means the customer (or any entity acting on behalf of the customer), being that entity ordering goods and/or services from A J Baker & Sons as described on any quotation, work authorisation or other form provided by A J Baker & Sons to the customer;
- "**Fee**" means the fee agreed to be paid by the Customer to A J Baker & Sons for the Services;
- "**Goods**" means any goods supplied by A J Baker & Sons or any of A J Baker & Sons' agents or assigns to the Customer from time to time;
- "**GST**" means any goods & services or similar tax imposed by the GST Law;
- "**GST Law**" means A New Tax System (Goods & Services Tax) Act 1999 (Cth) or any other act or regulation pursuant to or associated with or amending or replacing that Act;
- "**Order**" means an invitation to treat by the Customer for the supply of goods and/or services;
- "**Price**" means the cost of the Goods as agreed between A J Baker & Sons and the Customer and is exclusive of GST and freight charges unless explicitly specified by A J Baker & Sons to the contrary;
- "**Security Interest**" has the same meaning given to that term under the Personal Property Securities Act 2009(Cth); "**Services**" means any services provided by A J Baker & Sons or any of A J Baker & Sons' agents or assigns from time to time including but without limitation the services of engineering, designing, manufacturing or servicing refrigeration based heat transfer systems, food and beverage storage, preparation and presentation equipment and air-conditioning equipment;
- "**Standard Goods**" means goods supplied by A J Baker & Sons that were not manufactured to meet the Customer's specifications;
- "**Specialised Manufactured Goods**" means goods supplied by A J Baker & Sons that have been specifically manufactured or customised to meet the Customer's specifications.

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