

AJ BAKER & SONS PTY LTD

REFRIGERATION & AIR CONDITIONING WARRANTY TERMS

1. Warranty

- (a) Without limiting the effect of the Australian Consumer Law, the Company provides to its Customers the Warranties against Defects for the Goods Warranty Period or the Spare Parts Warranty Period, as appropriate, in accordance with these Warranty Terms for Goods or Spare Parts purchased from, or supplied by, the Company to its Customers, additional to the consumer guarantees under the Australian Consumer Law.
- (b) The Company agrees, subject to clauses 2(a), 2(b), 2(c), 2(e) and clause 4 to remedy the Defects by repairing or replacing the Goods or Spare Parts at its sole discretion, at its own cost. If the costs of repair to the Goods or Spare Parts is more than the value of the Purchase Price for the Goods or the Spare Parts then the Company reserves the right, at its discretion, to provide to the Customer replacement Goods or Spare Parts.
- (c) The Spare Parts Warranty only applies to Spare Parts that the Company has installed, or caused to be installed, for the Customer.
- (d) In remedying any Defects, the Customer agrees that the Company, at its sole discretion, can:
 - (i) where the Company elects to replace the Goods or Spare Parts, rather than repair the Goods or Spare Parts and no identical replacement is available for the Goods or Spare Parts, replace the Goods or Spare Parts with Goods or Spare Parts of a similar standard, design and quality available to the Company; and
 - (ii) use any refurbished part of a similar type, design and quality to repair any Spare Parts.

2. Warranty Claims

- (a) When making a Warranty Claim the Customer must notify the Company in writing of the Defects within 5 Business Days of the Customer becoming aware of the Defects and provide to the Company by email to: email@ajbaker.com.au:
 - (i) the Customer's full name, email address, telephone number and other contact details the Company requires;
 - (ii) the Company's Tax Invoice number relating to the purchase of the Goods or the Spare Parts;
 - (iii) the manufacturer, make, serial number or other identification number or details for the Goods or Spare Parts; and
- (b) If the Company requires, the Customer must provide to the Company any additional proof of purchase or other documents that the Company reasonably requires within 5 Business Days of the Company's request for such documents.
- (c) The Company's approval of any Warranty Claim is subject to the Company's inspection of the Goods or Spare Parts to determine the cause of the Defects.
- (d) If the Company repairs or replaces any Goods or Spare Parts under these Warranty Terms that repair or replacement will not renew the Goods Warranty Period or the Spare Parts Warranty Period, as appropriate.
- (e) The Company's repair or replacement of any Goods or Spare Parts is limited to work done to remedy the Defects during Ordinary Business Hours and does not include the expenses the customer incurs in claiming under these Warranty Terms. If the Goods or Spare Parts require repair

or replacement outside of Ordinary Business Hours, the Company will charge the Customer the Service Fee.

- (f) The Company reserves the right to send a Tax Invoice to the Customer for any repair or replacement works, including for any Service Fee or labour costs to remedy the Defects, if the Company's service technician, acting reasonably, determines that the repair or replacement of the Goods or Spare Parts was caused by an event excluded under clause 4 of these Warranty Terms.

3. Customer Warranties

When making a Warranty Claim the Customer warrants that:

- (a) the Customer has legal title to the Goods or Spare Parts;
- (b) no third party has undertaken or attempted to undertake any servicing, maintenance or repair to the Goods or Spare Parts;
- (c) the Goods and Spare Parts have been installed and used in accordance with the Company or the Manufacturer's instructions, specifications or requirements, including but not limited to any ambient temperature and/or relative humidity requirements;
- (d) the Customer has serviced, maintained and cleaned the Goods or Spare Parts in accordance with the Company or the Manufacturer's instructions, specifications and requirements; and
- (e) it will pay any Tax Invoice issued under these Warranty Terms within 14 days of the date of the Tax Invoice.

4. Exclusions and Limitations

Without limiting the effect of the Australian Consumer Law, these Warranty Terms do not apply to:

- (a) any damage to the Goods or Spare Parts where the Goods or Spare Parts have not been installed by the Company or its authorised agents;
- (b) Goods or Spare Parts that have not been maintained, serviced, operated, or used in accordance with the Company's or any Manufacturer's instructions, specifications or requirements provided with the Goods or Spare Parts;
- (c) Goods or Spare Parts where any serial number or other identification code or number has been altered or removed;
- (d) where any Defects are caused by the Customer's deliberate or negligent misuse or abuse or any physical alternation of the Goods or Spare Parts for repair or replacement;
- (e) Goods or Spare Parts that are lost or stolen;
- (f) any loss, damage or expense the Company incurs gaining access to the Goods or Spare Parts for the purpose of repair or replacement of the Goods or Spare Parts under this Warranty, including but not limited to the removal of barriers or constraints affecting the Company's accessibility to the Goods or Spare Parts;
- (g) damage caused to the Goods or Spare Parts or any of them during transport of the Goods or Spare Parts the Customer arranged;
- (h) the breakage of glass or plastic components of the Goods or Spare Parts;
- (i) the replacement of lights, fluorescent tubes or batteries relating to the Goods or Spare Parts;
- (j) damage to the Goods or Spare Parts the subject to fair, wear and tear including but not limited to filters, oil, fuses, handles, locks or hinges;
- (k) damaged caused by any spillage, power surge, use of incorrect power voltage or improper use of cleaning agents, detergents, bleaches or other chemical additives or agents;
- (l) damage caused by a force majeure event, including but not limited to fire, storm, tempest, floods, earthquake or damages caused by pests, insects or other foreign body;
- (m) damage caused by any Goods or Spare Parts being moved or repositioned whilst loaded with any stored products;

- (n) damage caused by the disassembly and reassembly of the Goods or Spare Parts in a place other than where the Company installed the Goods or Spare Parts;
- (o) damage caused to the Goods or Spare Parts because the Goods or Spare Parts are being used in an environment with an ambient temperature and relative humidity outside the Manufacturer's specifications, instructions or requirements for the Goods or Spare Parts; and any Defects to Goods or Spare Parts where the Company has disclosed to the Customer the Defects before the Customer purchased the Goods or Spare Parts.

5. General

- (a) The Company's Goods and Spare Parts sold come with guarantees that cannot be excluded under the Australian Consumer Law. The benefits to the customer under these warranty Terms are in addition to other rights and remedies under the Australian Consumer Law. The Australian Consumer Law requires the Company to include the following statements in these Warranty Terms, which the Company adopts:
 - "Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a Major Failure."
 - "Goods presented for repair may be replaced by refurbished Goods of the same type rather than being repaired. Refurbished parts may be used to repair the Goods."
- (b) The Company and the Customer agree that these Warranty Terms are governed and construed in accordance with the laws of Western Australia and that any dispute in relation to these Warranty Terms will be heard in the Courts of Western Australia.
- (c) The Company's failure to insist upon or enforce strict performance of any provision of these Warranty Terms cannot be construed as a waiver of any provision or right and these Warranty Terms can only be amended or modified in writing.
- (d) If any provision or part of any provision of these Warranty Terms is unenforceable it will be severed from these Warranty Terms and that severance or unenforceability shall not affect any other part or provision hereof.

6. Definitions

In these Warranty Terms:

Australian Consumer Law means the *Competition and Consumer Act 2010* (Cth), Schedule 2.

Business Day means a day that is not a Saturday, Sunday or public holiday.

Company means A.J. Baker & Sons Pty Ltd, ACN 008 734 834 of 6 Parkland Road, Osborne Park, WA 6017, telephone (08) 9242 5000 and email address: email@ajbaker.com.au.

Customer means the customer (or any entity acting on behalf of the customer) that purchased the Goods from the Company.

Defects means any defect, malfunction, failure or fault in the Goods or Spare Parts, other than an Excluded Defect, causing the Goods or Spare Parts not to perform in accordance with the Manufacturer's specifications, including any defect in materials, parts and workmanship.

Excluded Defect means any of the Defects or damage set out in clause 4 of these Warranty Terms.

Goods means any goods the Company supplies to the Customer from time to time.

Goods Warranty Period means 12 months from the Company's delivery of the Goods to the Customer or the Customer taking possession of the Goods, whichever is earlier.

Major Failure means (see section 260 of the Australian Consumer Law):

- (a) the Goods or Spare Parts would not have been acquired by a reasonable Customer fully acquainted with the nature and extent of the failure; or

- (b) the Goods or Spare Parts depart in one or more significant respects:
 - (i) if the Goods or Spare Parts were supplied by description, from that description; or
 - (ii) if the Goods or Spare Parts were supplied by reference to a sample or demonstration model, from that sample or demonstration model; or
- (c) the Goods or Spare Parts are substantially unfit for a purpose for which Goods or Spare Parts of the same kind are commonly supplied and the Goods or Spare Parts cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- (d) the Goods or Spare Parts are unfit for a disclosed purpose that the Customer made known to the Company and the Goods or Spare Parts cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- (e) the Goods or Spare Parts are not of acceptable quality because they are unsafe.

Manufacturer means the Manufacture of the Goods or the Spare Parts.

Purchase Price means the purchase price the Customer paid for the Goods or Spare Parts in accordance with the Company's Tax Invoice.

Ordinary Business Hours means between 8am and 5pm on any Business Day.

Tax Invoice means any tax invoice the Company has issued to the Customer for the Goods or Spare Parts or issued under these Warranty Terms.

Service Fee means \$500.00 or such other amount as the Company specifies from time to time.

Spare Parts mean any spare parts the Company supplies to the Customer from time to time.

Spare Parts Warranty Period means 3 months from the date of the Company's delivery of the Spare Parts to the Customer or the Customer taking possession of the Spare Parts, whichever is earlier.

Warranty Claim means any claim by the Customer under these Warranty Terms for any Defects to Goods or Spare Parts.

Warranties means the Goods Warranty and the Spare Parts Warranty.

Warranty Terms means these warranty terms.

7. Interpretation

Unless the contrary intention appears:

- (a) a reference to a clause is a reference to a clause of these Warranty Terms;
- (b) a reference to this document or another instrument includes any variation or replacement of either of them;
- (c) the singular includes the plural, the plural includes the singular and any gender includes each other gender;
- (d) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes that person's executors, administrators, successors, substitutes (including persons taking by novation) assigns and invitees;
- (f) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally;
- (g) a reference to a thing includes a reference to the whole or any part of that thing;
- (h) if a word or phrase is defined, cognate words and phrases have a corresponding meaning;
- (i) headings are for convenience only and do not affect the interpretation of this document; and
- (j) these terms override any other conditions between the parties to the extent of any inconsistency between them.