

## Holloway Air Pty Ltd Terms and Conditions

These are the Terms and Conditions for Holloway Air Pty Ltd ACN 610 339 163 ("Holloway Air").

### 1. Incorporation

- 1.1. These conditions govern every contract for the sale of Goods and/or the provision of Services by Holloway Air to the Customer, constitute all the Terms and Conditions agreed between them to the exclusion of all other Terms and Conditions.
- 1.2. No modification to these Conditions, whether put forward in the Customer's purchase order or otherwise shall bind Holloway Air unless agreed to in writing by its authorised employee.
- 1.3. These Conditions supersede any Terms and Conditions which have previously governed contracts for the sale of Goods and Services by Holloway Air to the Customer.

### 2. Payment

- 2.1. The terms of payment to Holloway Air are as follows:
  - a. 50% deposit prior to commencement of work;
  - b. Balance of payment on completion unless otherwise agreed in writing.
- 2.2. Failure to pay within agreed credit terms will automatically create stop credit and will not be recommenced until payment is received for all amounts outstanding beyond agreed credit terms.
- 2.3. Without prejudice to any other remedy, Holloway Air reserves the right to charge a default charge on any overdue payments at a rate of 10% per annum.

### 3. Quotations and Prices

- 3.1. Any quotation given by Holloway Air is a mere invitation to treat and does not constitute a contractual offer. All quotations hold for 30 days after issue, however Holloway Air may withdraw a quotation at any time.
- 3.2. Prices included in the quotation are based on the specification, drawings and/or requests by the Customer. Should the specification or Customer's request change, then Holloway Air reserves the right to vary the quotation price.
- 3.3. All quoted prices are exclusive of GST unless otherwise stated.

### 4. Delivery

- 4.1. The times quoted for delivery are estimates only and Holloway Air accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of Holloway Air.
- 4.2. Risk in the Goods passes on delivery to the Customer.

### 5. Retention of Title

- 5.1. All equipment supplied and installed by Holloway Air remains the property of the Company until all monies outstanding to the Company in connection with these Terms and Conditions have been paid.
- 5.2. In the event of a default by the Customer, then without prejudice to any other rights which Holloway Air may have at law or under this contract:
  - a. Holloway Air or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods;
  - b. Holloway Air may recover and resell the Goods.

### 6. Personal Properties and Securities Act 2009 (Cth) ("PPSA")

- 6.1. Defined terms in this clause have the same meaning as given to them in the PPSA.

- 6.2. Holloway Air and the Customer acknowledge that these Terms and Conditions constitute a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in favour of Holloway Air over the Goods supplied or to be supplied to the Customer as Grantor pursuant to these Terms and Conditions.
- 6.3. The Goods supplied or to be supplied under these Terms and Conditions fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms and Conditions.
- 6.4. Holloway Air and the Customer acknowledge that Holloway Air, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer, as Grantor, under these Terms and Conditions on the PPSA Register as Collateral.
- 6.5. The Customer will execute documents and do such further acts as may be required by Holloway Air to register the security interest granted to the Company under these Terms and Conditions under the PPSA.
- 6.6. The Customer waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to Holloway Air.
- 6.7. The Customer agrees to indemnify Holloway Air on demand for all costs and expenses, including legal costs and expenses on a solicitor/client basis, associated with the;
  - a. registration or amendment or discharge of any Financing Statement registered by or on behalf of Holloway Air; and
  - b. enforcement or attempted enforcement of any Security Interest granted to Holloway Air by the Customer.
- 6.8. The Customer agrees:
  - a. that, to the extent permitted at law, nothing in sections 130 to 143 of the PPSA will apply to these Terms and Conditions or the Security under these Terms and Conditions;
  - b. to waive its right to do any of the following under the PPSA:
    - i receive notice of removal of an Accession under section 95;
    - ii receive notice of an intention to seize Collateral under section 123;
    - iii receive notice of disposal of Collateral under section 130;
    - iv receive a Statement of Account if there is no disposal under section 130(4);
    - v receive notice of retention of Collateral under section 135;
    - vi redeem the Collateral under section 142;
    - vii reinstate the Security Agreement under section 143;
    - viii object to the purchase of the Collateral by the Secured Party under section 129; and
    - ix receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.

## **7. Retention Money**

- 7.1. Unless otherwise provided in writing in this tender, the purchaser shall not be entitled to retain any part of the purchase price by way of retention monies to guarantee satisfactory operation of the equipment supplied and installed.

## **8. Warranties**

- 8.1. Holloway Air's liability in respect of a breach of a consumer guarantee for any Goods not of a kind ordinarily acquired for personal, domestic or household use is limited, to the extent permissible by law and at Holloway Air's option;
- a. in relation to the Goods:
    - i the replacement of the products or the supply of equivalent products;
    - ii the repair of the products;
    - iii the payment of the cost of replacing the products or of acquiring equivalent products; or
    - iv the payment of the cost of having the products repaired.
  - b. in relation to the services:
    - i the supply of the services again; or
    - ii the payment of the cost of having the services supplied again.
- 8.2. To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions are excluded and Holloway Air is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:
- a. any increased costs or expenses;
  - b. any loss of profit, revenue, business, contracts or anticipated savings;
  - c. any loss or expense resulting from a claim by a third party; or
  - d. any special, indirect or consequential loss or damage of any nature whatsoever caused by Holloway Air's failure to complete or delay in completing the order to deliver the Goods.
- 8.3. Any claims to be made against Holloway Air for short delivery of Goods must be lodged with Holloway Air in writing within 48 hours of the delivery date.

## **9. Indemnity**

- 9.1. To the full extent permitted by law, the Customer will indemnify Holloway Air and keep Holloway Air indemnified from and against any liability and any loss or damage Holloway Air may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms and Conditions by the Customer or its representatives.

## **10. Exclusions**

- 10.1. The price agreed herein does not include any expense covering damage arising from hidden or unknown contingencies found at the job site: example – faults or deteriorations of the building structure, pre-existing conditions of the site, heritage or preservation orders, finding of hazardous substances and the like, unless specifically noted in the tender price.

## **11. General**

- 11.1. These Terms and Conditions are to be construed in accordance with the laws from time to time in the State of Victoria and the Commonwealth of Australia.
- 11.2. These Terms and Conditions contain all of the Terms and Conditions of the contract between the parties and may only be varied by agreement in writing between the parties.
- 11.3. Any conditions found to be void, unenforceable or illegal may, to that extent be severed from these Terms and Conditions.
- 11.4. No waiver of any of these Terms and Conditions or failure to exercise a right or remedy by Holloway Air will be considered to imply or constitute a further waiver by Holloway Air of the same or any other term, condition, right or remedy.