Aircon Christchurch 2022 Limited
Address: 5/21 Michelle Road, Wigram, CHRISTCHRUCH 8042
Phone: 0800 161 163
Email: office@airconchch.co.nz
Web: www.airconchch.co.nz

TERMS OF TRADE

CONTENTS

1. PART A: OVERVIEW OF THESE TERMS 1
2. PART B: QUOTES AND CARRYING OUT OF WORKS 1
3. PART C: PRICE 2
4. PART D: PAYMENT TERMS 2
5. PART E: COMPLIANCE AND INFORMATION 2
6. PART F: SUSPENSION OF WORKS, DISPUTE RESOLUTION AND LIABILITY 3
7. PART G: GENERAL 4
8. PART H: DICTIONARY 4
9. PART I: SPECIFIC TERMS 5

PART A: OVERVIEW OF THESE TERMS

These Terms of Trade apply to all Works that we carry out for you.

At Aircon Christchurch 2022 Limited, ensuring our Terms are transparent and easy to understand is important to us. If you have any questions or are unsure about anything, please contact us.

To make these Terms easy to use, we:

(a) have set out a '**Dictionary**' in Part H, which explains the specific meaning, for the purposes of these Terms, of the capitalised words used in these Terms; and

(b) have included **summaries / outlines** for each Part in blue boxes – these are intended for guidance only and do not replace any of the terms in these Terms.

1. Introduction

1.1 These Terms set out all of the terms and conditions that apply to the Works that we carry out for you.

1.2 Any other terms and conditions will not apply unless expressly approved in writing by us for a particular Quote.

1.3 We may update these Terms on notice to you in writing. Our updated Terms will apply to all Works you request after we have notified you that we have updated our Terms.

1.4 If there is any inconsistency between the documents making up these Terms, unless the parties expressly agree otherwise, the documents will apply in the following descending order of priority:

(a) the Quote;
(b) the Specific Terms;
(c) these Terms of Trade (excluding the Specific Terms); and
(d) Ancillary Documents.

PART B: QUOTES AND CARRYING OUT OF WORKS

Part B sets out details about how we quote and carry out and complete the Works. It also confirms responsibility for obtaining Approvals for the Works and sets out the process that applies if there are any defects in the Works, or if these Terms are cancelled.

2. Quote process

2.1 Where you ask us to carry out any Works, we may provide you with a proposed quote or estimate and advise you of our order process. Unless we advise you otherwise, our quoting process is set out in this clause 2.

2.2 Any proposed quote or estimate we provide you will remain valid for 14 days from the date of issue stated on the proposed quote/estimate. You may accept the proposed quote/estimate at any time within that period.

2.3 If the proposed quote/estimate expires, or you request changes to the proposed quote/estimate, we may re-quote to reflect any agreed alterations to the proposed quote/estimate and resubmit that revised proposed quote/estimate to you.

2.4 If you accept the proposed quote/estimate (or any revised proposed quote/estimate) this will become the Quote for the purposes of these Terms.

2.5 We are under no obligation to re-quote or re-estimate at any time, or to enquire as to the authority of any person confirming a proposed quote/estimate (or revised proposed quote/estimate) on your behalf.

3. Carrying out of the Works

3.1 We will use reasonable efforts to commence the Works on the Commencement Date specified in the relevant Quote.

3.2 We will carry out and complete the Works using all reasonable skill and care, in accordance with the requirements of these Terms, applicable Laws, and Approvals, to achieve Completion by the Due Date for Completion.

3.3 However, despite clauses 3.1 and 3.2, unless we expressly agree otherwise in writing, the Commencement Date and Due Date for Completion are indicative only.

4. Design

4.1 Except as stated in this clause, we are not responsible for the design of any part of the Works, including as may be prepared by you or on your behalf.

4.2 We will be responsible for the design of those parts of the Works that are specified in the Quote (**Contractor Design Items**).

4.3 Where we undertake any Contractor Design Items, we will carry out such design with reasonable skill, care, and diligence.

5. Delay

5.1 We will be entitled to an extension to the Due Date for Completion by reason of any Variation, any cause beyond our control, any breach of these Terms by you, or wherever permitted by these Terms. Any such extension will be determined by us (acting reasonably) and notified to you.

6. Approvals

6.1 You will be responsible to apply for, give all notices in relation to, obtain and to pay for all Approvals required for the carrying out and completion of the Works.

6.2 You will also provide us with a copy of any Approvals in relation to the Works upon our request.

7. Site access

7.1 You will allow us and our Representatives non-exclusive possession of the Site on the Commencement Date to the extent necessary to allow us to perform our obligations under these Terms.

7.2 In accessing the Site, we agree to abide by the health and safety obligations under clause 22. We are not liable for any loss or damage to the Site unless due to our negligence.

7.3 If and to the extent that any third parties will be carrying out any activity in or around the Site when we are carrying out the Works, you must notify us in writing, and ensure that such third parties are required when performing their activities to use their best endeavours to cooperate with us, not cause or contribute to a breach of any obligation we owe to you and not otherwise interfere with or cause any delay or disruption to the Works.

8. Completion of the Works

8.1 We may notify you in writing when we consider that the Works have achieved Completion.

8.2 You will, within 10 Business Days after receiving our notice under clause 8.1, notify us in writing that:

(a) the Works have achieved Completion, stating the date accordingly (**Completion Date**); or

(b) the Works have not yet achieved Completion, giving detailed reasons and proposing work that you (acting reasonably) consider needs to be carried out for Completion to be achieved.

8.3 Completion will be deemed to have occurred, and the Completion Date will be the date that is the last day of that period, if:

(a) you fail to confirm that Completion has occurred (along with the Completion Date); or

(b) you fail to confirm that Completion has not yet been achieved (with reasons) within the period required under clause 8.2; or

(c) the reasons you provide under clause 8.2(b) are (in our opinion) unreasonable.

9. Materials

9.1 We will ensure that the Materials used in the Works are new (unless otherwise agreed with you) and satisfy the requirements of these Terms.

9.2 If requested by you, we will use reasonable endeavours to:

(a) obtain available product warranties for Materials used in the Works; and

(b) obtain relevant warranties relating to materials and workmanship from our subcontractors engaged in the Works.

10. Title and risk

10.1 All goods and other materials comprising the Works, or which are to be consumed in the Works, will become your property and title will pass to you when payment is made in full in accordance with clause 15.

10.2 Despite the passing of title to you, risk in the Works (and the goods and other materials comprising the Works or which are to be incorporated into the Works) will not pass to you until Completion.

11. Variations

11.1 We will carry out Variations to the Works instructed in writing by you at any time prior to the Completion Date.

11.2 You may issue a Variation which increases or decreases the quantity of any work, omits any work, changes the character or quality of any material or work, requires additional work to be done, or changes the level, line, position, or dimensions of any part of the Works.

11.3 If we consider that any instruction you give us, whether verbally or in writing, which is not expressly stated to be a Variation, or that any other matter should be treated as a Variation, the following process will apply:

(a) we will notify you in writing;

(b) within 10 Business Days of receipt of our notice, you will confirm in writing that the instruction or matter involves a Variation, or give reasons if you disagree; and

(c) if you do not give us the notice within the time required by clause 11.3(b), the instruction or matter will be treated as a Variation.

11.4 The value of any Variation instructed by you or treated as a Variation will be:

(a) agreed between the parties;

(b) failing agreement, determined by us with reference to any schedule of rates included with these Terms; or

(c) in the absence of a schedule of rates, determined by us based on what we consider to be fair and reasonable in the circumstances, plus an allowance for Mark Up.

11.5 Where a Variation is valued under clause 11.4(b), if the schedule of rates is stated to be exclusive of Mark Up, then we will add an allowance for Mark Up to those rates.

11.6 The value of Variations will be added to or deducted from the Price.

11.7 Where we have suffered delay or incurred additional cost due to us encountering on the Site physical conditions which substantially increase the cost to us, provided that such physical conditions could not reasonably have been foreseen by us, such conditions shall be treated as a Variation and clause 11.4 shall apply.

12. Defects

12.1 We will remedy all Defects that you notify to us in writing at any time prior to the expiry of 12 months from the Completion Date.

12.2 We have the first right to remedy any Defects in our workmanship that you notify to us in writing during the required notification period. You must give us a reasonable opportunity to inspect and remedy the Defect. If you engage a third party to rectify the Defect without first obtaining our written consent, we will not be responsible for any costs you incur in doing so, and our contractual warranty will not apply to that work.

12.3 Nothing in these Terms will affect any rights you may have from the implied warranties under sections 362I to 362K of the Building Act 2004.

13. Cancellation

13.1 Either party may cancel these Terms by written notice if the other party:

(a) commits a material breach of these Terms which is not remedied within 20 Business Days of written notice of the breach from the other party; or

(b) suffers an Insolvency Event.

13.2 If we are unable to the carry out and complete the Works, due to reasons beyond our reasonable control, we may cancel these Terms (in whole or in part) by giving written notice to you. We will repay you any amount you have paid to us in advance for the Works. We will not be liable for any loss or damage arising from such cancellation.

13.3 You may cancel delivery of the Works by written notice served within 24 hours of placement of the order.

13.4 Except as permitted under these Terms (including under clause 13.1) or otherwise at law, you will not be entitled to cancel these Terms after you accept the Quote.

PART C: PRICE

Part C sets out terms relating to the Price for the Works. The Price may be set on a 'lump sum' or 'cost reimbursement' basis. This will need to be clearly specified in the Quote.

14. Price

14.1 The Price under these Terms will be determined on the basis of either a lump sum or cost reimbursement, as specified in the Quote.

14.2 Where the Quote specifies that the Price is to be determined on the basis of:

(a) a lump sum, the Price will be the sum stated in the Quote, subject to adjustments in accordance with these Terms; or

(b) cost reimbursement, the Price will be determined as follows:

(i) the net cost of the quantities of labour, materials, plant and subcontractors used in the execution of the Works;

(ii) an allowance for Mark Up; and/or

(iii) where and to the extent these Terms contain a schedule of rates in respect of any item, those rates will be used in lieu of net cost, and Mark Up may be added to the extent the relevant rates are exclusive of any such allowance.

14.3 Unless otherwise stated, the Price does not include GST.

14.4 We may charge you for freight, insurance, disbursements, and any applicable taxes, duties and levies, in addition to the Price.

PART D: PAYMENT TERMS

It is very important to us that you pay us in full by the due date for payment. The following clauses provide additional protections for us to reflect that arrangement, including terms that will apply if there are any delays or disputes relating to payments.

15. Payment

15.1 We may upon either:

(a) the last day of each month, submit to you an invoice for the value of the Works carried out (including Variations and the value of any Materials delivered to Site but not yet incorporated within the Works) in accordance with these Terms during the preceding month; or

(b) the achievement of any payment milestones (as may be specified in the Quote) submit to you an invoice for the amount that is the instalment of the Price required to be paid on account of achievement of that payment milestone.

15.2 Where a deposit is required under clause 17.1, we may at any time submit to you an invoice for the agreed amount of the deposit.

15.3 You must pay us all Amounts Owing (as set out in our invoice):

(a) to our bank account (notified to you and updated at any time) or any other payment method that we agree with you;

(b) within **7** days from the date of the invoice (**Due Date**); or

(c) subject to our prior approval, on the 20th of the month following; or

(d) in accordance with our agreed payment plan; and

(e) in full without deduction, withholding, set-off or counterclaim.

15.4 If you have any dispute relating to an invoice issued by us, you:

(a) must notify us of that dispute in writing within 5 days from the date of invoice (after that period, unless there is a manifest error, you will be deemed to have accepted the invoice); and

(b) will only withhold payment of the amount in dispute and will, upon resolution of any dispute, immediately pay the balance (if any) due to us.

15.5 We and you each agree to promptly deal with any disputed invoices and, where possible, to resolve disputes before the Due Date.

16. Credit terms and repayment obligations

16.1 The supply of Materials (as part of the Works) to you on credit is subject to our prior approval. We may use the services of credit reporters and debt collection agencies (in accordance with clause 24.2).

16.2 You must notify us immediately:

(a) if you suffer an Insolvency Event. Any Amount Owing will, whether or not due for payment, immediately become due and payable if an Insolvency Event occurs; or

(b) if you are a company and there is a material change in your effective management or ownership.

17. Deposit and guarantee

17.1 We may require that you pay us in advance, or pay a deposit, or provide a guarantee, or other security, before we supply Materials (as part of the Works) or carry out the Works, as security for any Amount Owing.

17.2 If we cancel an order (for reasons other than your breach of these Terms), we will refund any deposit that you have paid to us in full. Otherwise, any deposit that you pay to us is non-refundable, unless we expressly agree otherwise in writing

18. Rights to recover Materials

18.1 We retain ownership of all Materials that we supply to you until we have received payment in full of the Amount Owing.

18.2 If you resell or use any Materials before ownership of the Materials has passed to you, you will be deemed to hold the proceeds of sale on trust for us to the extent of the Amount Owing.

18.3 If any Amount Owing is overdue or if an Insolvency Event occurs, you must return Materials to us on request or permit us to enter any premises where Materials may be stored to repossess those Materials.

19. Late payments

19.1 If payment in full of any Amount Owing (which is not subject to a genuine dispute) is not made to us on the Due Date, we may:

(a) suspend, or cancel (in accordance with clause 13.1(a)), the carrying out of any part of the Works for you;

(b) cancel any rebates or discounts (whether or not previously credited); and

(c) charge you interest at a rate of 2.5% per month on the balance of the outstanding amount from the Due Date until the date the outstanding amount is paid in full, accruing daily and charged monthly.

20. Costs of recovering Amounts Owing

20.1 You must reimburse us for any reasonable costs and expenses we incur to recover any Amount Owing, including any debt collection fees or commission and full legal expenses.

21. Security interests

21.1 You acknowledge that these Terms create, in our favour, a security interest (as defined in the PPSA) in all Materials and the proceeds of any Materials (in accordance with clause 18) (**Security Interest**), to secure the payment by you to us of the Amount Owing.

21.2 You undertake to promptly sign any further documents which we may reasonably require to enable us to perfect and maintain the perfection of the Security Interest (including by registration of a financing statement) and to provide not less than 14 days' prior written notice of any proposed change in your name and/or any other change in details (including changes in address, trading name or business practice).

21.3 The parties agree to contract out of sections 114(1)(a), 133 and 134 of the PPSA. You agree to waive your rights under the PPSA to the extent permitted by section 107(2) of the PPSA and to receive a verification statement relating to any Security Interest. Where we have rights in addition to Part 9 of the PPSA, those rights will continue to apply.

21.4 We reserve the right to require a guarantee, or any other additional security (at your cost), as security for payment, before we provide Materials or carry out the Works for you.

PART E: COMPLIANCE AND INFORMATION

Part E sets out the provisions relating to health and safety, privacy, confidentiality, intellectual property rights and insurance. Unless we agree otherwise, we own all intellectual property rights in the Materials and Works.

Where these Terms are used for residential building work (as contemplated by the Building Act 2004) you may request a disclosure statement and consumer protection checklist from us before we finalise a Quote. You acknowledge that you are aware of these rights and have had the opportunity to request this information before finalising a Quote.

22. Health and safety

22.1 Each party will comply with the Health and Safety at Work Act 2015 (**HSW Act**), including all applicable regulations under the HSW Act, as well as all applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.

22.2 You must notify us of any known hazards at the Site or arising from your premises to which any of our Representatives may be exposed while at the Site or on your premises and ensure that the Site and your premises is without risks to the health and safety of any person.

22.3 Each party must consult, co-operate with and co-ordinate activities with all other persons who have a health and safety duty in relation to the same matter in carrying out the Works.

22.4 We do not and will not assume any duty imposed on you pursuant to the HSW Act in connection with these Terms.

23. Free issue materials

23.1 Where you have supplied any materials for us to use when carrying out and completing the Works, you acknowledge and accept responsibility for those materials, including their suitability for use in the Works and any faults inherent in them.

23.2 If we consider (acting reasonably) that the materials supplied by you are non-conforming in any way and will not conform with applicable Laws (including applicable New Zealand Standards), then we are entitled to suspend carrying out the Works until the appropriate conforming materials are sourced.

23.3 Where clause 23.2 applies, we are entitled to:

(a) recover all costs associated with suspension of the Works and sourcing of conforming materials; and

(b) an extension to the Due Date for Completion for any associated delay.

24. Privacy

24.1 We may collect, use and share Personal Information:

(a) for the purposes of the performance of our obligations or exercise of our rights under these Terms; and

(b) in accordance with the Privacy Act 2020.

24.2 We may share Personal Information with our Related Companies.

24.3 We may use the services of credit reporters and debt collection agencies to manage credit and recover amounts owing. We may provide your Personal Information to those agencies in order to use their services. Information disclosed to credit reporters (including default information) will be held by them and used to provide credit reporting services.

24.4 The credit reporters we may use are Centrix, Equifax, and Experian. Details of how the credit reporters handle your Personal Information can be found in their privacy policies:

(a) Equifax: https://www.equifax.co.nz/privacy
(b) Centrix: https://www.centrix.co.nz/privacy-statement
(c) Experian: https://www.experian.co.nz/privacy-policy

24.5 The debt collection agency we use is EC Credit Control (NZ) Limited. Details of how they handle your Personal Information can be found in their privacy policy: https://www.eccreditcontrol.co.nz/privacy/

24.6 By accepting these Terms, you understand that:

(a) we may use the credit reporters credit report services to credit check you;

(b) in doing so we may provide your Personal Information to the credit reporter, and they will store this information on their systems and use it to provide reporting services to us and their customers;

(c) the credit reporters may provide us with Personal Information they hold about you for the purposes of a credit reference;

(d) if you default on any payment obligations, information about the default may be given to the credit reporters, and they may share this information with their customers;

(e) we may use the credit reporting services for purposes relating to the provision of credit to you. This may include using the credit reporters monitoring services to receive updates if any of the information held about your changes; and

(f) you have rights of access to, and correction of your credit information and any other Personal Information held by the credit reporters as set out in their privacy policy.

24.7 If you provide us with any information about a third party (including a Representative), or authorise us to collect that information, you confirm that you are authorised by the individual concerned to provide their Personal Information to us or authorise the collection of information about them in accordance with this clause 24. You also confirm that you have informed the individual of their rights to access and request correction of Personal Information.

24.8 You (if you are an individual) and your Representatives have the right to access, and request correction of, any of your Personal Information held by us.

25. Confidentiality

25.1 Each party must keep confidential all Confidential Information.

25.2 Nothing in clause 25.1 prevents a party from disclosing Confidential Information if the disclosure is:

(a) required by law, or a Regulator (but only to the extent required);

(b) reasonably required to enable a party to perform its obligations or exercise its rights under these Terms; or

(c) to a Related Company or its Representatives on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with these Terms.

25.3 We may refer to you as a customer (including by using your logo) and publish any testimonials or references that you provide to us, on our website and associated marketing materials. We will ensure that any such references or testimonials accurately represent your experience with our Works. Please contact us if you do not approve of us referring to you in accordance with this clause or have any comments on published content.

26. Insights and Intellectual property

26.1 We may also use any information that we collect in connection with the Works to improve our products and services, for statistical and research purposes, and for general information purposes including to provide industry and market insights (together, Insights), provided that:

(a) we must ensure that our obligations of confidentiality and privacy are paramount – for example, we will ensure that any information that we disclose or publish in accordance with this clause 26.1 is in a fully aggregated and de-identified form (so that it does not identify you or any individuals); and

(b) we will not use information that we collect in connection with the provision of Works to you, in accordance with this clause 26.1, if you have informed us that you do not authorise us to do so.

26.2 To the extent required by law, you grant us a non-exclusive, perpetual, irrevocable, royalty-free licence to use and sub-licence information we collect in connection with the provision of Works to you, in accordance with clause 26.1. However, for clarity, we own the intellectual property rights in all Insights.

26.3 We (or our licensors) own all rights, title and interest in the intellectual property rights in the Works at all times.

26.4 Any new intellectual property which is created by us or on our behalf, including as a result of, or in connection with our carrying out and completing the Works, will be owned by us, unless otherwise agreed in writing.

26.5 You assign all intellectual property rights to us with effect from creation, to the extent required to give effect to clause 26.3 and 26.4, and agree to do all things reasonably required by us to give effect to such assignment.

26.6 You warrant that the use by us of any designs, instructions or specifications supplied to us by you will not infringe the intellectual property rights of any other person and indemnify us against any losses, damages, liabilities or costs (including full legal costs) that we may suffer or incur in the event of any such infringement.

27. Insurance

27.1 The insurances required under these Terms, the parties responsible to effect the insurances, and the amounts or values of the insurances are set out in the Quote. Such insurances will be on market standard terms and conditions.

27.2 If the Quote does not specify any such insurances, we will for the duration of the Works maintain appropriate insurance cover for our business, including public liability, and our vehicles and equipment. We will provide reasonable evidence of such insurances to you on request.

27.3 We will pay any deductibles or excesses under any insurance policy where the loss, damage or liability arises out of our acts or omissions. You will pay any deductibles or excesses under any insurance policy where the loss, damage or liability arises out of your acts or omissions.

27.4 Promptly upon request, you will provide us with reasonable evidence of the currency of any insurances that you are required to hold.

PART F: SUSPENSION OF WORKS, DISPUTE RESOLUTION AND LIABILITY

If a dispute arises under these Terms, we must follow the process in this part F to resolve the matter. If a claim arises under these Terms, any amount payable by you or us will be limited by the liability framework set out in this Part F.

28. Suspension of Works

28.1 If, due to any act, omission or default by you, you effectively stop us from continuing the Works or performing or complying with our obligations under these Terms, then without limiting our other rights and remedies, we may suspend the Works immediately after serving on you a written notice specifying the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by us as a result of such suspension and recommencement are payable by you on demand by us.

28.2 If pursuant to any right conferred by these Terms, we suspend the Works and the act, omission or default that led to that suspension continues un-remedied, subject to clause 13.1, for at least 10 Business Days, we are entitled to terminate these Terms, in accordance with clause 13.

29. Dispute Resolution

29.1 If a dispute arises out of or in connection with these Terms, either party may give a notice to the other setting out the details of the dispute (**Dispute Notice**).

29.2 Following receipt of a Dispute Notice:

(a) a Representative of each of us (with authority to settle the dispute) will meet, within 10 Business Days, to try to resolve the dispute;

(b) if the dispute is not resolved within 10 Business Days of our Representatives meeting (or if the meeting does not take place, for any reason, within 10 Business Days of the date of a Dispute Notice), the dispute will be referred to the senior manager of each party (if applicable), who will try to resolve the dispute within a further 10 Business Days; and

(c) if the dispute is not resolved by our respective Representatives in accordance with clause 29.2(b), then either party may commence court proceedings.

29.3 This clause 29 does not affect either party's rights or obligations arising under the Construction Contracts Act 2002 or restrict either party from applying to a court for interim measures or any other form of urgent relief at any time. However, neither party may commence any other form of court proceeding without first following the procedure set out in this clause 29.

29.4 Each party must continue to perform its obligations in these Terms, despite the existence of a dispute, subject to the termination rights set out in these Terms.

30. Warranties

30.1 To the fullest extent permitted by law, except as expressly set out in these Terms, we expressly exclude all warranties, representations, descriptions, statements, terms or conditions (whether express or implied) whether under statue, law, trade, custom or otherwise that would (but for this clause) apply to the Works.

31. Limitation of liability

31.1 Subject to clause 31.2, if we have any liability under or in connection with these Terms, to the maximum extent permitted by law:

(a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with these Terms will be limited to the Price paid by you to us for the Works; and

(b) we will not be liable for any:

(i) indirect, special or consequential loss or damage whatsoever; or

(ii) loss of profits, revenue, data, goodwill, customers or opportunity or loss of or damage to reputation.

31.2 Nothing in these Terms (including clauses 31.1 and 31.2) will limit or exclude our liability for:

(a) any fraudulent act or omission;

(b) a breach of clause 25 (Confidentiality);

(c) our wilful breach of these Terms;

(d) our gross negligence; and/or

(e) any matter to the extent that liability cannot be excluded or limited by law.

31.3 The limitations and exclusions on liability in this clause 31 will apply irrespective of the legal basis for the applicable claim, including contract, equity or tort (including negligence). However, this clause 31 does not limit or exclude any rights that you may have under statute.

31.4 In no circumstances will we have any liability whatsoever under or in connection with these Terms:

(a) for the acts or omissions of your Representatives or any third party;

(b) for any acts or omissions of performance in accordance with your instructions (or instructions from your Representatives); or

(c) to any third party.

PART G: GENERAL

Part G describes miscellaneous provisions necessary for the proper operation of these Terms.

32. General

32.1 **Governing Law**: These Terms are governed by and to be construed in accordance with the laws of New Zealand and each party submits to the exclusive jurisdiction of the courts of Christchurch, New Zealand.

32.2 **Previous Agreements**: These Terms supersede and replace any previous written agreements between the parties relating to the Works.

32.3 **Sub-contracting**: We may subcontract the performance of our obligations (including to a Related Company), on the basis we remain solely liable to you for the performance of our obligations.

32.4 **Assignment:** You must not assign, novate or transfer your rights or obligations under these Terms without our prior written consent (which may be withheld in our sole discretion). We may assign these Terms to any other person on notice to you (provided that we will request your prior approval (not to be unreasonably withheld or delayed) if the assignment could have any material adverse effect on you). Without limiting the foregoing, we may assign to any other person all or part of the Amount Owing by you to us.

32.5 **Amendments**: Any amendment to these Terms must be in writing signed by each party, except where stated otherwise in these Terms or where we are required to make changes to ensure compliance with applicable Laws (in which case we notify you of the changes in writing).

32.6 **Force majeure**: We will not be liable to you for any failure or delay in performing our obligations under these Terms where such failure or delay is caused by events or circumstances beyond our reasonable control, including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of God.

32.7 **Waiver**: A single or partial exercise or waiver of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right.

32.8 **Survival**: Any provision of these Terms, which is by its nature a continuing obligation, will survive termination.

32.9 **Rights of Third Parties**: These Terms are not intended to confer a benefit on any person other than the parties to these Terms.

32.10 **Relationship**: We will carry out and complete the Works for you as an independent service provider. Nothing in these Terms creates any relationship of employment, trust, agency, joint venture, partnership, or any other fiduciary relationship between the parties.

32.11 **Non-exclusive**: These Terms are not exclusive and do not impose any restriction on us carrying out and completing works for, or you purchasing any works from, any other person.

32.12 **Counterparts**: These Terms may be executed in any number of counterparts (including by electronic signature or by email exchange of .pdf copies) which together will constitute the one instrument.

32.13 **Notices**: Any notice or other communication under these Terms will be in writing and will be made by email, post or personal delivery to an address specified in the Quote. Notices will be deemed received on receipt in the case of personal delivery, on the first Business Day after posting notice, and on completion of transmission in the case of an email.

PART H: DICTIONARY

Part H sets out a Dictionary, to define the capitalised terms used in these Terms.

33. Definitions

Amount Owing means any amount owed by you to us, from time to time, including the Price, any applicable amounts referred to in clause 14.4, any interest payable by you, your liability under these Terms and any enforcement costs incurred by us in seeking payment of any Amounts Owing by you.

Ancillary Document means any drawings, specifications or other documents in relation to the Works provided by you to us, and that we refer to as forming part of the Quote.

Approvals means all necessary approvals, consents, licenses, permissions, certificates and statements of, or required by, any relevant local, territorial or regional authority, including any building consents, resource consents, producer statements and code compliance certificates.

Business Day means Monday to Friday, excluding public holidays in New Zealand.

Completion means that stage of the Works when they are complete except for minor omissions or minor defects which you consider (acting reasonably) do not prevent the Works from being used for their intended purpose and the rectification of which will not impact the convenient use of the Works.

Commencement Date means the date specified in the Quote, or such other date as may be notified by us to you in writing.

Completion Date has the meaning given in clause 8.

Confidential Information means all information that could be reasonably regarded in the circumstances as confidential, including information which relates to the business, interests or affairs of a party, the terms of use, the Works (as applicable), and intellectual property rights, but excludes information which is:

(a) in the public domain, other than as a result of a breach of these Terms;

(b) in the possession of a party prior to the commencement of these Terms without any obligation of confidentiality; and

(c) is independently developed or acquired by a party prior to the commencement of these Terms without relying on information which would itself be Confidential Information.

Defect means any defect in the Works, whether in relation to workmanship or Materials, but excludes:

(a) any fault or defect in goods or materials supplied by you;

(b) any fault, defect or damage arising from any design provided by you;

(c) any loss or damage to the Works resulting from any of your (or your Representatives) acts or omissions;

(d) minor deviations in specification, measurements, colour, weight, size or strength of any part of the Works;

(e) the merchantability and the quality or fitness for any particular purpose of the Works;

(f) any improper operation or maintenance of the Works; or

(g) fair wear and tear.

Due Date for Completion means the date specified in the Quote, as may be adjusted for any extension of time granted under and in accordance with clause 5.1.

Insolvency Event means, in relation to you, any of the following steps has occurred (or we have reasonable grounds to believe that any of these steps is likely to occur):

(a) the primary, or all, of your business activities being suspended or ceasing;

(b) the presentation of an application for your liquidation;

(c) the making of any compromise, proposal or deed of arrangement with all or some of its creditors;

(d) the appointment of a liquidator, receiver, statutory manager, or similar official;

(e) the suspension or threatened suspension of the payment of your debts as they fall due;

(f) the enforcement of any security against the whole or a substantial part of your assets;

(g) if you are an individual, anything having a similar effect to any of the events specified above happens in relation to you; or

(h) any other insolvency event or proceedings analogous to any of the foregoing occurs in any relevant jurisdiction,

in each case, unless it takes place as part of a solvent reconstruction, amalgamation, merger or consolidation.

Law means any statute, regulation, order, ordinance, rule, subordinate legislation in force from time to time, and as may be amended, consolidated or replaced from time to time.

Mark Up means our allowance for on-site overheads and off-site overheads and profit, as specified in a Quote.

Materials means any materials supplied by us to you at any time as part of the Works, including as may be specified in the Quote.

Personal Information has the meaning given to that term in the Privacy Act 2020.

PPSA means the Personal Property Securities Act 1999.

Price means the Price payable by you to us for the Completion of the Works, in accordance with clause 14.1, subject to adjustments as may be provided for in these Terms.

Quote means the quote for Works that is accepted by you in accordance with clause 2, that specifies (among other matters) the date of the Quote, the Price, a description of the Works and the Site, the Commencement Date, the Due Date for Completion, the Mark Up, details of any Contractor Design Items, required insurances, contact details for you and us, and any other matter contemplated by these Terms as being recorded in the Quote.

Regulator means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or any of the Works.

Related Company has the meaning given to it in the Companies Act 1993, read as if a reference to company was a reference to any body corporate of any jurisdiction.

Representatives means directors, officers, employees, agents and contractors of the relevant party.

Site means the physical site where the Works will be carried out as described in the Quote.

Specific Terms means the terms (if any) that are included in Part I to these Terms.

Terms means these Terms of Trade (including any Specific Terms outlined in Part I), as may be amended from time to time, each Quote and any additional terms expressly agreed in accordance with clause 1.2 (if applicable).

Variation means a variation to the Works under clause 11.

We or **us** means the contractor carrying out the Works, Aircon Christchurch 2022 Limited, and as identified in the Quote.

Works means the works described in the Quote and any Ancillary Document, including any Materials.

You or **your** means the customer purchasing the Works from us, as identified in the Quote.

34. Interpretation

In these Terms, unless the context otherwise requires:

(a) headings are for convenience only and do not affect interpretation;

(b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or and any modification, consolidation, amendment, re-enactment, replacement or codification of it;

(c) reference to “in writing” includes by email and a reference to “agree” or “agreement” or “notice” or “approval” means an agreement, notice or approval (as applicable) in writing;

(d) the words “include” or “including”, or similar expressions, are to be construed without limitation;

(e) a reference to a party to includes that party’s successors and permitted assigns and substitutes; and

(f) a word importing the singular includes the plural and vice versa.

PART I: SPECIFIC TERMS

Part I details any specific terms that apply to the carrying out of the Works.

35. General risk

35.1 In the event that we are required to provide the Works urgently, which may require our staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or public holidays) then we reserve the right to charge you additional labour costs (penalty rates will apply at time and a half normal rates), unless otherwise agreed between both parties.

35.2 Further to clause 13.2, we reserve the right to postpone or refuse to provide Works where:

(a) unsafe or unsanitary conditions exist; or

(b) we deem the equipment (which is subject to the Works) to be no longer economically repairable, in which case we may provide you with a proposal to replace such equipment; or

(c) access to the equipment is restricted, including, but not limited to, having adequate crawl space or attic and roof space to provide dry access to service equipment and assets.

35.3 All customary building industry tolerances shall apply to the dimensions and measurements of the Works, unless both parties agree otherwise in writing.

35.4 We may, at our discretion, accept the return of non-defective Materials for credit, but we reserve the right to charge you a restocking fee plus any freight.

36. Information we provide

36.1 Any advice, recommendation, or information that we provide to you in relation to the Works or Materials supplied is based on our knowledge, experience and any relevant information provided by you at that time. We shall not be liable in any way whatsoever for any damages or losses that you suffer, or which occur where you elect not to adhere to the advice, recommendations or information we provide to you.

37. Information we require

37.1 We shall be entitled to rely on the accuracy of any plans, specifications and other information provided by you. You acknowledge and agree that if any of this information provided by you is inaccurate, we accept no responsibility for any loss, damages, or costs howsoever resulting from these inaccurate plans, specifications or other information.

37.2 You warrant that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto, and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. You agree that we shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.

38. Your acknowledgements

38.1 You acknowledge and accept that:

(a) the cost of any fees or inspections by engineers or council shall be your responsibility;

(b) prior to the scheduled installation, it is your responsibility to fully disclose in writing any information which may affect our installation procedures;

(c) Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, we reserve the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 11. In all such cases we will notify you in advance of any such substitution, and we reserve the right to place your order and/or Works on hold until such time as both parties agree to such changes;

(d) if you ask us to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to you irrespective of whether or not the repair goes ahead;

(e) we are only responsible for parts that are replaced by us and that in the event that other parts/goods subsequently fail, you agree to indemnify us against any loss or damage to the Materials, or caused by the goods, or any part thereof howsoever arising;

(f) whilst we shall take all reasonable care during the performance of the Works, we shall not be held liable for any loss, damages, or costs howsoever resulting from drilling or fixing the Materials into any masonry or rendered surfaces during the installation process, unless due to our negligence;

(g) we accept no responsibility for any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with our and/or the manufacturers' recommendations; and

(h) if we are only supplying Materials and not installing the Materials, we shall not be liable for any defect or damage resulting from incorrect or faulty installation carried out by any other third party.

38.2 In the event that we discover asbestos and/or other hazardous materials whilst undertaking any Works, we shall immediately advise you of the same and shall be entitled to suspend the Works pending a risk assessment in relation to those materials. You shall be liable for all additional costs incurred by us (howsoever arising) as a result of the discovery of asbestos/hazardous materials and/or any suspension of Works in relation thereto.

38.3 You acknowledge and accept that, where we have performed temporary repairs:

(a) we will immediately advise you of the fault and shall provide you with an estimate for the full repair required; and

(b) we offer no guarantee against the reoccurrence of the initial fault, or any further damage caused.

39. Air Conditioning Risk

39.1 Whilst the final location of the condensing unit is at your discretion, a charge will apply as a variation as per clause 11 if you request that the unit is not located adjacent to the external wall, due to the additional piping required.

39.2 The final location of the wall or floor unit must be determined at the Site by you.

39.3 We shall upon installation ensure that all installed Materials meet current industry standards applicable to noise levels; however, we 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.

39.4 If any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then you shall be responsible for any and all costs involved.

39.5 You acknowledge and agree that it is your responsibility to insure any equipment partly or completely installed at the Site, against theft or damage.

39.6 If the electrical wiring is required to be re-positioned at the request of any third party contracted by you, then you agree to notify us immediately upon any proposed changes. You agree to indemnify us against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 11.

40. Electrical testing and standards

40.1 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 electrical installation under the electrical safety regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wiring standards.

40.2 If, during the course of installation, Works carried out within or around switchboards reveal that the installation is defective or deemed unsafe by us, we shall immediately notify you. Where the electrical supply has been isolated, it shall not be re-energised until the identified defect or unsafe condition has been rectified, and the installation made safe in accordance with applicable electrical safety regulations. You acknowledge and agree that all costs associated with the rectification work, including materials and labour, shall be borne by you.

40.3 Any Works performed on or in the vicinity of live conductors, where such work is considered safe, shall be conducted in accordance with the applicable Australian and New Zealand Standards (including AS/NZS 4836:2023), relevant Commonwealth and state or territory legislation, and workplace health and safety regulations. Our live Works procedures are designed to eliminate risk of injury to our employees, damage to your installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 11.

41. Site conditions

41.1 We are not responsible for the removal of rubbish from or clean-up of the building/construction Site. All rubbish generated by us will be placed in a designated area appointed by you, but its removal will be your responsibility or that of your Representative, unless otherwise agreed.

41.2 You agree that:

(a) it is your responsibility to provide us, while at the Site, with adequate access to available water, electricity, toilet and washing facilities as may be required;

(b) we are not insured to remove furniture or fittings and will not do so;

(c) you will:

(i) ensure that we have clear and free access to the Site at all times to enable us to undertake the Works, and that we shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to our negligence;

(ii) provide and have erected scaffolding to enable the Works to be undertaken (where in our opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed. If you fail to provide the scaffolding and the responsibility then falls onto us, all associated costs will be added as an extra in accordance with clause 11;

(iii) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. We accept no liability for any loss or damage to such items if you fail to comply with this clause, unless due to our negligence; and

(iv) be liable for all costs associated in taking all reasonable precautions to protect against destruction or damage by way of vandalism or theft.

41.3 Where the Site is damaged due to vandalism and you have failed to comply with clause 41.2(c), you are responsible for the cost of repair or replacement.

41.4 You agree to be present at the Site when and as reasonably requested by us and our employees, contractors and/or agents.

41.5 Where we require that Materials, tools etc. required for the Works be stored at the Site, you will supply us a safe area for storage and will take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement will be your responsibility.

42. Hidden services

42.1 Prior to us commencing any work you must advise us of the precise location of all hidden services on the Site and clearly mark the same. The hidden mains and services you must identify include, but are not 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 Site.

42.2 Whilst we will take all care to avoid damage to any hidden services you agree to indemnify us in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified in accordance with clause 42.1.