

## **Terms and Conditions of Trade**

### **TERMS OF TRADE, CREDIT APPLICATION AND SECURITY AGREEMENT**

These terms (the Condensed Terms of Trade), as amended or replaced from time to time, govern the supply by Compressed Air Controls Limited (we and us) to the person named below (you) of:

- Both verbal and written acceptance of the quote denotes acceptance of these terms.
  - Goods, as defined more particularly in clause 16; and
  - Services including installing Goods, establishing systems made up of a combination of Goods (Infrastructure), and identifying and repairing faults (Services).
- Also, by these Terms of Trade you:
- Apply for credit; and
  - Pursuant to the Personal Property Securities Act 1999, grant us a security interest in all Goods that we supply to you.

#### **QUOTATION**

- Verbal acceptance of the quote denotes acceptance of these conditions.
- A quotation does not give rise to a binding contract until you place an order which is subsequently accepted by us. A quotation may be withdrawn any time before acceptance, and will lapse upon the expiration of 30 days from the date of quotation.
- Except to the extend permitted by law, you cannot cancel a contract after the order has been accepted by us, and is bound to pay the agreed price.
- Any time stated for the delivery of Goods and Services is an estimate only. We are not liable for any delay in delivery.
- Should you require any changes to our quoted Goods and Services, you shall request such changes in writing before acceptance of the quotation. Where you request changes to be made to quoted Goods and Services after we have accepted your order, the price shall be appropriately adjusted and any estimated delivery date rescheduled.

#### **PRICE**

- Our prices are for accepted Orders where we have provided a quotation for the relevant Goods and/or Services within the 30 days before the Order was placed, that the quotation, plus GST and any other taxes and transport costs
- For all other accepted Orders, our prevailing hourly rate at the date of supply, including for any travel to and from your site, plus GST and any other taxes or transport costs
- The price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent those such taxes are expressly included in any quotation given by the Seller.
- An extra charge may be made where additional work results from lack of precision in the Buyer's specifications or the Buyer alters the specifications after the date of this contract.
- Alterations to any price list shall be effective from the date specified by the Seller at the time of giving notice to the buyer.

#### **PAYMENT**

- All accounts are payable by the 20th day of the month following the date of invoice.
- Failure to pay us by the Due Dates (whether in relation to an Order or a Service Level Agreement) you will be in default, and we may:
  - Charge you default interest of 2.5% per month calculated on a daily basis on the overdue amount, from the due date until the date when payment is made. The charging of default interest does not imply the granting of an extension of credit;
  - Recover from you (as a debt owing) all costs incurred in attempting to obtain payment, including legal costs (on a solicitor and own client basis), debt collection costs and administrative charges;
  - As your irrevocably appointed agent for the purposes of this clause, enter any premises where we reasonably believe Goods are stored and remove them. We will not be responsible for, and you indemnify us against, any damage caused or loss or liability incurred in entering the premises or removing Goods. We may resell the Goods and apply the proceeds to reduce the amount that you owe us;
  - Exercise any of our remedies for default under clause 12 or at law; and
  - Limit your access to our terms of trade.
- An administration fee of \$5.00 will be incurred to any accounts that:
  - The total of any one invoice (on account) being posted is less than \$10.00
  - Any invoices (on account) that need to be followed-up to obtain a purchase order number from you.

#### **DELIVERY AND RETURNS/CANCELLATIONS**

- Whenever we accept an Order, we will endeavour to deliver the Goods to your premises and to perform the Services by the time that you and we agree. However, we will not be liable for any failure to delivery all or any part of the Goods or Services, or for any delay in delivery
- You must ensure that delivery of Goods is not refused except where we have first agreed in writing to the refusal.
- Upon delivery, you must ensure that all Goods are correct in name, color, quality, size, faults, etc. No claims will be accepted once Goods have been converted in any way.
- Returns will only be accepted if the Goods are not in accordance with your accepted order and where the Goods are returned within 7 days from receipt of Goods. We shall be at liberty to decline or refuse such returns as we see fit.

#### **RISK AND OWNERSHIP OF GOODS**

- Risk of loss, deterioration or damage from any cause, of any Goods that we supply to you, passes to you on delivery of the Goods to you.
- We retain ownership of the Goods until you have paid us, in full, all amounts that you owe us in relation to all Goods and Services that we have supplied to you. If any Goods are mixed or commingled (as defined in the Personal Property Securities Act 1999) (PPSA) with other Goods before payment, we will own the resulting mixed or commingled Goods as if they were Goods that we had supplied.
- Until the previous clause is fulfilled, you will ensure that all Goods are stored in a manor that the condition will not deteriorate and that it is clear that they are property of us.

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#### **PERSONAL PROPERTY SECURITIES ACT 1999**

- You acknowledge that:
  - these Terms of Trade are a security agreement for the purposes of section 36 of the PPSA;
  - we take a security interest in all Goods that we have previously supplied to you (if any) and all Goods that we will supply to you in the future, to secure (with equal priority) payment of all amounts that you owe us;
  - the security interest will continue until you have paid all amounts owing; and
  - you waive your right to receive a verification statement under section 148 of the PPSA
- You:
  - will promptly sign any further documents, provide any further information, or do any other things that we reasonably require to perfect and maintain the perfection of our security interest (including by registering a financing statement or financing change statement);
  - indemnify (and if requested reimburse) us for all expenses that we incur in registering a financing statement or financing charge statement or releasing Goods charged by the statement; and
  - will give us 14 days' prior written notice of any change in your name, business practice or any other details, and use your best endeavours to ensure that any applicable financing change statement is registered disclosing your new details.

#### **WARRANTIES AND LIABILITY**

- Where Goods are covered by a manufacturer's warranty we will endeavour to ensure that any faults in the Goods that are notified to us are attended to quickly by the manufacturer or authorised agents. However, to the extent that we are not reimbursed by the manufacturer, we will charge you for our Services in attending to the faults.
- Subject to THE PREVIOUS clause, all warranties, representations and conditions relating to the Goods and Services, whether express or implied, whenever arising, and whether originating by statute, law, trade, custom or otherwise, are expressly excluded to the fullest extent permitted by law. In particular:
  - We do not warrant that the Goods will be error-free or that we will be able to correct all errors in the Goods, any System, or your environment;
  - you acknowledge that the Goods and Services are acquired for the purposes of a business, and that the Consumer Guarantees Act 1993 will not apply; and
  - you will indemnify us and keep us indemnified against all costs (including legal costs on a client and own solicitor basis), expenses, damages, losses (including loss of profits, data or business opportunity) that we suffer or incur as a result of any claim, whether in tort (including negligence), breach of statutory duty, equity or otherwise.
- If you on sell any Goods supplied by us, you agree to indemnify us for any losses to third party claims against us as manufacturers/importers/distributors.
- If, despite the other provisions of these Terms of Trade, we are found to be liable to you, then our liability is limited to an amount equal to the price you paid for the particular Good or Service in respect of which the liability arises.

#### **DEFAULT AND TERMINATION**

- If we have reasonable grounds to believe that:
  - you are in default of these Terms of Trade;
  - you have become insolvent or have ceased or threatened to cease to carry on all or substantially all of your business or operations;
  - a receiver or manager has been appointed in respect of any part or the whole of the your assets or business;
  - any resolution has been passed or proceedings have been commenced to wind you up; or
  - you have entered into a formal proposal for compromise with creditors under the Companies Act 1993,
- we may:
  - not supply you with any more Goods or Services, or defer supplying you with them; and
  - treat any Order or Service Level Agreement as having been cancelled or terminated by you; and enforce our security interest in the Goods.
- If we withdraw our approval of you for credit purposes, we may treat any Service Level Agreement as having been cancelled or terminated by you.
- Termination or cancellation of any Order or Service Level Agreement will not affect the rights, powers, remedies, obligations, duties and liabilities of either party which have accrued before termination or expiry.

#### **USE OF INFORMATION**

- The buyer agrees that the Seller may obtain information about the Buyer from the buyer or any other person (including any creditor debt collection agencies) in the course of the Setters business, including credit assessment, debt collecting and direct marketing activities, and the Buyer consents to any person providing the seller with such information.
- The buyer agrees that the Setter may use any information it has about the buyer relating to the Buyers credit worthiness and give that information to any other person, including any credit or debt collection agency for credit assessment and debt collection purposes. The Buyer agrees that any other information collected by the setter about the buyer is accessed or collected for the use of the Seller in the course of business, including direct marketing activities.
- The Buyer must notify the Setter of any change in circumstances that may affect the accuracy of the information provided by the buyer to the Seller.
- If the buyer is an individual, ie: a natural person, the buyer has rights under the Privacy Act 1993 to access and request the correction of any personal information which the Seller holds about the Buyer.

#### **OTHER AGREEMENTS**

- If there is any inconsistency between these terms and any order submitted by the Buyer (whether in writing, verbally or by Electronic Data Interchange (EDI) or any other arrangement between the parties, these terms prevail unless otherwise agreed in writing by the parties.

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#### **GENERAL**

- Entire agreement: These Terms of Trade, and any current Service Level Agreement, constitute the entire agreement between you and us in relation to their subject matter. They supersede all earlier negotiations, representations, warranties, proposals, communications, understandings and agreements.
- Amendments: You may amend, replace or cancel these Terms of Trade or any current Service Level Agreement with our prior written agreement (but not otherwise). We may amend, replace or cancel these Terms of Trade of any current Service Level Agreement by giving you one month's written notice of the change, or by posting the change at [www.aircontrols.co.nz](http://www.aircontrols.co.nz)
- Force majeure: We are not required to perform any obligation under these Terms of Trade or a Service Level Agreement if prevented from doing so by any event beyond our reasonable control. If we cannot fulfill our obligations under any Order or Service Level Agreement for more than 30 days because of this event, either you or we may immediately cancel that Order or Service level Agreement by written notice to the other party.
- No waiver: Any exercise or failure to exercise any right or remedy available to us does not limit our rights to exercise that or any other remedy. A waiver of any of these Terms of Trade must be in writing and signed by one of our authorized officers.
- Relationship: You and we are independent contractors. Nothing in these Terms of Trade or any Service Level Agreement should be interpreted as constituting you our agent, partner, contractor, officer or employee. You are not entitled to enter into any obligations on our behalf without our express written consent.
- Partial invalidity: If any part of these Terms of Trade or any Service Level Agreement or their application is or becomes invalid or unenforceable, the remainder will remain enforceable to the greatest extent permitted by law.
- Express rights: Our exercise of any express right set out in these Terms of Trade is without prejudice to any other rights, powers or remedies available to us in contract, at law or in equity, including any rights, powers or remedies which would be available to us if the express right was not set out in these Terms of Trade.
- Third parties: These Terms of Trade do not create any obligations enforceable by any third party, including any End User.
- Law: These Terms of Trade and any current Service Level Agreement are governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

*Nothing In these terms Is Intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms are to be modified to the extent necessary to give effect to that intention.*

E. & O.E.