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MECHVAC ENGINEERING (INCORPORATING BURRIDGE ENGINEERS)

Mechanical Electrical Conveying Heating Ventilation & Air Conditioning

MECHVAC ENGINEERING PTY LTD (MECHVAC) TERMS AND CONDITIONS

1. IN THESE TERMS AND CONDITIONS:

1.1. **'Customer'** means the purchaser of the Goods specified on MECHVAC'S invoice and who has been approved as a result of a submitted credit application. The Customer shall at all relevant times have one officer primarily responsible for ordering Goods on behalf of the Customer from MECHVAC (**'Account Administrator'**). The Account Administrator shall have the sole responsibility for any and all purchases made by the Customer or its officers and / or employees with MECHVAC and for any and all dealings by the Customer with MECHVAC.

1.2. **'Customer Confidential Information'** means all and any information whether of a scientific, technical, industrial, commercial, business or private nature whether designated in writing by the Customer as confidential, but does not include:

1.2.1. Information which is in the public domain or of which MECHVAC was aware of prior to entering into this agreement; or

1.2.2. Information which is reasonably required by MECHVAC for the purpose of providing and developing works, programs or assistance for other manufacturers; or

1.2.3. Information which is to be used by MECHVAC for case studies or other specified purposes where the use of information for such purposes has been approved by the Customer.

1.3. **'Goods'** means the Goods specified in MECHVAC invoices.

1.4. **'MECHVAC Confidential Information'** means any and all information whether of a technical, scientific, industrial, commercial, business, private or domestic nature of or relating to MECHVAC and the business relating to MECHVAC, but does not include

information which is in the public domain or which information the Customer was aware of before entering into this agreement.

- 1.5. **'Price'** means the price specified on MECHVAC's invoices.
- 1.6. Words importing singular include the plural and vice versa.
- 1.7. Words importing natural persons include corporations and vice versa.
- 1.8. 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 or modifying any condition, warranty, guarantee right or remedy implied by law and which by law cannot be excluded, restricted or modified.

2. **TERMS OF SALE.**

2.1. **Purchases.**

2.1.1. These Terms and Conditions shall apply to and be terms and conditions of any contract formed as a result of acceptance by MECHVAC of an offer made by the Customer and shall in the event and to the extent of any inconsistencies prevail over all terms and conditions contained in any offer, order or other document submitted to MECHVAC by the Customer.

2.1.2. MECHVAC reserve the right to amend, modify, add or remove any portion or portions of these terms and conditions at any time. Amendments will be effective immediately upon notification on it's website. It is your responsibility to check these terms and conditions periodically for any changes. Your continued use of the website following such notification will represent an agreement by you to be bound by the terms and conditions as amended.

2.2. **Ordering of Goods.**

2.2.1. The Customer may offer to purchase Goods by the submission of a purchase order. The purchase order must contain the Customer's full name, email and postal address, purchase order number, ABN number and phone number contact details and any other ordering information required.

- 2.2.2. The Account Administrator of the Customer is personally responsible for all contracts for purchase entered into by the Customer with MECHVAC.
- 2.2.3. In submitting a purchase order the Account Administrator warrants that the Customer is able to make a legally binding contract with MECHVAC.
- 2.2.4. Any description given or applied to the Goods the subject of the purchase order is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Customer hereby affirms that it does not in any way rely on any description when entering into a contract for the sale and purchase of Goods the subject of any individual purchase order.

3. **PRICE.**

- 3.1. Unless otherwise stated in writing, all prices quoted by MECHVAC shall be in Australian Dollars.
- 3.2. If the cost to MECHVAC of any Goods increases for any reason whatsoever (including such matters as foreign exchange rates) before the Price is paid to MECHVAC by the Customer, then MECHVAC may increase the Price to cover the increased cost and the Customer shall pay to MECHVAC the increased Price.
- 3.3. MECHVAC agrees to provide the works on the terms set out in the quotation for the MECHVAC quoted price in the quotation item of the proposal. The quoted price is payable by the Customer to MECHVAC at the time and in the manner specified in the quotation item of the proposal without deduction, set off or counterclaim. The quoted price payable to MECHVAC is payable to MECHVAC by giving written notice to the Customer at any time of any Goods and Services Tax, Broad Based Consumption Tax, Indirect Tax, Value Added Tax or any other tax or duty imposed by the Federal Government or any State Government whether at point of sale or at some other specific occurrence so that the Customer shall bear any and all GST to be payable or remitted by MECHVAC and submitted in respect of the quoted price or otherwise in respect of the order, unless otherwise agreed by MECHVAC in writing.

3.4. MECHVAC may give one or more notices to vary the quoted price pursuant to this clause as required by MECHVAC from time to time.

4. **FURTHER WORKS.**

MECHVAC is only obliged to perform the works as set out in the quotation. There is no obligation on MECHVAC to perform any other works. Any variation to the works must be in writing and signed by MECHVAC and the Customer.

5. **WORKING HOURS.**

Unless specified otherwise in the order allowance has been made for all works to be performed unimpeded during a normal 38 hour working week. Any requirement by the Customer for MECHVAC to perform works outside of the specified working hours in the order will be subject to a claim for variation to contract for any penalty rates and other associated costs involved and incurred by MECHVAC in complying with the order.

6. **CONFIDENTIALITY.**

6.1. **MECHVAC Confidential Information.**

The Customer shall keep and cause to be kept secret and confidential and shall not use or permit to be accessed, used, published or disclosed any MECHVAC confidential information save and except where such disclosure is required by law or order of a Court.

6.2. **Customer Confidential Information.**

MECHVAC shall keep and cause to be kept secret and confidential and shall not use or permit to be accessed, used, published or disclosed any Customer confidential information save and except where such disclosure is required by MECHVAC for or in the provision of the works or is required by law or an order of a Court.

6.3. The obligations of confidentiality imposed on both parties shall survive completion of the implementation of the works and the term of this agreement.

7. DELIVERY.

- 7.1. MECHVAC shall use reasonable endeavours to comply with any reasonable time requested / specified for the delivery of the Goods by the Customer.
- 7.2. The Customer acknowledges that any delivery times are estimated delivery times only and that MECHVAC shall not be liable to the Customer for any loss, damage or delay whatsoever occasioned to the Customer or any other person as a direct or indirect result of late delivery or non-delivery of the Goods or any part of the Goods.
- 7.3. The Customer agrees to pay the delivery charge as charged by MECHVAC for delivering Goods.

8. PAYMENT / RETENTION OF TITLE.

- 8.1. Unless other credit terms have been agreed in writing, the Customer shall pay MECHVAC the Price of the Goods in full prior to dispatch of the Goods.
- 8.2. Where payment is not made by the Customer in accordance with Clause 8.1 but the sale and purchase occurs pursuant to credit terms agreed after the acceptance of the Customer's credit application, then notwithstanding and without prejudice to any of its other rights, MECHVAC may do any one or more of the following.
 - 8.2.1. Charge interest on the daily outstanding balance of all amounts due and payable at the rate of Two Per Cent (2%) per annum from the due date until the payment is received by MECHVAC, such interest to be paid by the Customer forthwith on demand or failing demand contemporaneously with the payment of such outstanding balances:
 - 8.2.1.1. withhold delivery of the Goods or any part of the Goods not delivered to the Customer;
 - 8.2.1.2. where MECHVAC has dispatched the Goods, stop the Goods in transit;
 - 8.2.1.3. where the Goods have been delivered to the Customer, enter the premises of the Customer (where the Goods are located) without liability for trespass or any resulting damage and take possession of the Goods;

8.2.1.4. keep or re-sell any Goods repossessed pursuant to Clause 8.2.1.3.

8.3. Until payment is made by the Customer in full, the Customer:

- 8.3.1. must not sell, charge, dispose of or otherwise deal with the Goods in any manner whatsoever save with the express consent in writing of MECHVAC;
- 8.3.2. must hold the Goods in a dry and safe location as the fiduciary agent and bailee of MECHVAC but at the Customer's own risk;
- 8.3.3. must keep the Goods so that they can be clearly identified as belonging to the MECHVAC;
- 8.3.4. must deliver up the Goods to MECHVAC as and when required;
- 8.3.5. must so long as MECHVAC is entitled to the property in the Goods, store the Goods so that they are clearly identifiable as the property of MECHVAC;
- 8.3.6. must not use the Goods in any manufacturing process or otherwise change their character or incorporate them in any item without the prior written consent of MECHVAC;
- 8.3.7. in the event that the Customer has used the Goods in some manufacturing or construction process of its own or that of some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the Goods in trust for MECHVAC. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to MECHVAC at the time of the receipt of such proceeds;
- 8.3.8. until payment has been made by the Customer in full, MECHVAC may at any time, on reasonable notice to the Customer, either by its own officers or employees, or by contractors or agents, carry out an inspection of all premises, inventory, accounts and documentation to ensure compliance with the obligation of the Customer to keep separate accounts, records and storage of the Goods.

8.4. In the event that the Customer is a sole trader or trustee of a trading trust, MECHVAC reserves the right in addition to its reliance upon the retention of title provisions referred to herein, in its sole discretion, to register a security interest in respect of any goods

provided on credit in accordance with its rights pursuant to The Personal Property Securities Act 2009 and the Customer agrees to execute any and all documents to assist with the registration of the relevant security interest.

- 8.5. In the event that MECHVAC registers a security interest in accordance with clause 8.4 herein, the Customer acknowledges that MECHVAC has a security interest in the Goods for the purposes of the Personal Property Securities Register Act (“PPSR”) and to the extent applicable the PPSR Act applies. To give effect to the above, the Customer consents to MECHVAC effecting a registration on the PPSR website in any manner MECHVAC consider appropriate in relation to any security interest arising under or in connection with this agreement or any agreement reached as a result of the acceptance of the credit application of the Customer and the Customer agrees to provide all assistance reasonably required to facility this. The Customer also undertakes to do all such things, including executing any new document or providing any information that is required by MECHVAC so that MECHVAC acquire and maintain a perfected security interest under the PPSR Act in respect of the Goods and it’s proceeds so that MECHVAC may register a financing statement or financing charge statement and to ensure that the security position of MECHVAC and its rights and obligations are not adversely effected by the operation of the PPSR Act.
- 8.6. In the event that the Customer is a partnership, corporate entity or the trustee of a trust, the person / persons who open the account and submit the details requested and required for the processing of the credit application and/or who sign the delivery documents thereby acknowledge and confirm that that person or persons has / have the authority to bind the partnership / corporate entity / trustee of the trust and that the partnership / corporate entity / trustee of the trust is bound in accordance with these terms and conditions.
- 8.7. The person / persons who open the account and/or sign as indicated the credit application in their capacity as either a principal of the partnership or as a director of the corporate entity as a trustee of the trust confirm and acknowledge, in consideration of MECHVAC selling the Goods to the Customer in accordance with the terms of an approved credit application, that he / she / they personally and jointly and severally guarantee the payment of any monies and the performance of any act, matter or thing

as set out in these terms and conditions in default of the Customer paying such monies or doing any act, matter or thing.

9. TITLE AND RISK.

- 9.1. Title of the Goods shall not pass to the Customer until payment in full of the Price to MECHVAC.
- 9.2. The Customer shall in the meantime take custody of the Goods and retain them as the fiduciary agent and bailee of MECHVAC.
- 9.3. The Customer may resell the Goods but only as a fiduciary agent of MECHVAC.
- 9.4. Pending resale or utilisation in any manufacturing or construction process, is to be kept separate on its own, properly stored, protected and insured.
- 9.5. The Customer will receive all proceeds whether tangible or intangible, direct or indirect of any dealing with the Goods in trust for MECHVAC and will keep such proceeds in a separate account until the liability to MECHVAC has been discharged.
- 9.6. Risk of loss or damage to the Goods passes to the Customer upon dispatch of the Goods to the Customer.
- 9.7. MECHVAC shall not be liable to the Customer or any other person for any loss, deterioration of or damage to Goods in transit.

10. LIMITATIONS OF LIABILITY / INDEMNITY BY MECHVAC.

- 10.1. Goods supplied pursuant to these terms and conditions are the subject of Australian Consumer Law protection. The Australian Consumer Law requires the inclusion of the following statement within the company warranty in any consumer contract:

“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 for 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 an acceptable quality and the failure does not amount to a major failure.”

10.2. MECHVAC does not exclude or limit the application of any provision of any statute (including Australian Consumer Law) where to do so would:

10.2.1. contravene that statute; or

10.2.2. cause any part of this Clause to be void.

10.3. Subject to clause 10.4, and to the extent permitted by the Australian Consumer Law and all relevant State legislation, the sole obligation of MECHVAC under this Agreement is to use its best endeavours to provide the Goods or to repair the Goods or replace (at MECHVAC' discretion) any part of the Goods which is found to be defective during the period of one year from the date of the supply of the Goods. In no event shall MECHVAC be liable for any other claims or damages including, but not limited to, claims for faulty design, negligent or misleading advice, damages arising from any loss of use of the products and any indirect, special or consequential damages or injury to any person, corporation or other entity where the product is faulty and or where the product has failed. MECHVAC shall be under no obligation to repair or replace the Goods as provided by this clause in the event that the failure arises as a result of any incorrect installation of the Goods or usage of the Goods contrary to any and all specifications and directions given to the Customer.

10.4. If any of the Goods are supplied to the Customer as a "consumer" of Goods and Services within the meaning of that term in the Australian Consumer Law as amended or similar State legislation, the Customer will have the benefit of certain non-excludable rights and remedies in respect of the Goods or Services and nothing in these Terms and Conditions excludes or restricts or modifies any condition, warranty, right or remedy which, pursuant to the Australian Consumer Law or similar legislation is so conferred. However, if the product is not a product ordinarily acquired for personal, domestic or household use or consumption, MECHVAC limits its liability to payment of an amount equal to the lowest of:

10.4.1. The cost of replacing the Goods;

10.4.2. The cost of repair of the Goods;

10.4.3. The cost of having the Goods repaired or replaced.

- 10.5. Where Goods are subject to a warranty supplied by a manufacturer or supplier other than MECHVAC, the obligation of MECHVAC under this agreement to repair or replace the Goods shall, notwithstanding the provisions of clause 10.3, be limited to the terms of the applicable manufacturer's warranty subject to clause 10.4 which preserves certain non-excludable rights and remedies under the Australian Consumer Law in the appropriate circumstances.
- 10.6. MECHVAC shall indemnify the Customer and save the Customer harmless from any loss, damage or expense (including, without limitation costs, whether or not the subject of a Court order) incurred by the Customer in respect of direct loss suffered by the Customer arising solely from the failure of the Goods. MECHVAC shall not indemnify the Customer in respect of any loss, damage or expense incurred or suffered by the Customer in respect of the failure of the Goods arising from any incorrect installation of the Goods or incorrect usage of the Goods contrary to the terms and specifications relevant to those Goods.
- 10.7. It is acknowledged and agreed by the parties that the extent of the indemnity provided by MECHVAC to its Customers pursuant to these terms and conditions shall only extend directly to the Customer and any and such indemnity shall only extend to any and all damage based solely on an assessment and proof of the failure of the Goods supplied by MECHVAC to the Customer and only any and all direct loss and or damage associated with the Goods failure and no consequential damage whatsoever.

11. SITE ALLOWANCES.

No provision has been included in the quoted price for any special or additional site allowances or for payment of a construction industry training act levy.

12. PRACTICAL COMPLETION.

The work shall be deemed to have reached practical completion upon acceptance by the Customer for the equipment to be deemed to be fit and safe for the intended purpose, whether or not the equipment is to be used for the intended purpose immediately upon acceptance or at a later date.

13. **EXPIRATION OF PROVISION OF CREDIT.**

13.1. Any agreement for the provision of credit to the Customer agreed to by MECHVAC shall expire if any of the following events occur:

13.1.1. Any money owing by the Customer to MECHVAC is not paid on or before its due date;

13.1.2. The Customer being a company - any application is made for the winding up or the appointment of a receiver and/or administrator and/or controller to the Customer;

13.1.3. The Customer being an individual - enters into a composition of its creditors or any execution on a judgment is not satisfied in full;

13.1.4. The Customer does anything that is a fundamental breach of the agreement between the parties.

13.2. Upon the happening of any of the above events, any and all credit granted by MECHVAC to the Customer will automatically expire and any and all monies due by the Customer to MECHVAC at that time shall become immediately due and payable.

14. **WARRANTIES.**

14.1. MECHVAC's liability shall extend only to the repair or replacement of goods under warranty consistent with clause 10.1 above.

14.2. MECHVAC shall not be liable in any manner whatsoever either to repair or replace goods if the goods purchased by the Customer from MECHVAC have been used incorrectly or misused.

14.3. If MECHVAC is not the actual or the deemed manufacturer of the Goods the subject of the purchase order under the Australian Consumer Law, then the warranty of the actual manufacturer of the goods is the only warranty given to the Customer in respect of the Goods and clause 10 does not apply.

15. **INSURANCE.**

MECHVAC warrants that it has and will maintain with a reputable insurance company and keep in effect at all times during the term of this agreement, insurance with a reputable insurer to cover every event giving rise to any liability or obligation imposed upon or arising from any breach of these terms and conditions by MECHVAC.

16. **CANCELLATION OF ORDERS.**

Upon cancellation of a written order, the Customer must put same in writing and forward to MECHVAC immediately.

17. **RETURNS.**

17.1. Returns for credit of goods supplied will be accepted at the sole discretion of MECHVAC and must be received within 7 days.

17.2. In certain circumstances, a restocking charge may apply for returned goods or should goods be returned for repair and are found to be non-faulty, a AU\$40 per half hour service fee may be charged.

17.3. To be entitled to a return for credit, the returned goods must be in a complete format with unmarked packaging and manuals.

18. **COMPLAINTS – TIME LIMITS.**

18.1. Any complaint as to the goods supplied must be made in writing to MECHVAC within three (3) business days of delivery of the goods. Any complaint made after the expiry of three (3) business days will not be accepted by MECHVAC.

18.2. If the complaint by the Customer is accepted by MECHVAC, MECHVAC has the sole discretion as to whether to replace the goods the subject of the claim or to credit the appropriate proportion of the purchase price of the goods relevant to the complaint.

19. **FORCE MAJEURE.**

MECHVAC shall not be liable to the Customer for any delay or failure to perform all or part of MECHVAC's obligations to the Customer under the contract where such a delay or failure is due to any cause whatsoever beyond reasonable control of MECHVAC including but not

limited to, acts of God or public enemy, insurrection or riot, war or military operation, national or local emergency, pandemic, act or omissions of government, industrial disputes of any kind (whether or not involving MECHVAC's employees), fire, lightning, explosion, flood subsidence, inclement weather, quarantine, epidemic, regulation or order affecting materials, act or omissions of third persons (including any supplier of the goods or parts of the Goods and any supplier of services) or any other cause whether similar or dissimilar outside of MECHVAC's reasonable control.

20. **APPLICABLE LAW.**

These terms and conditions shall be governed by and construed in accordance with South Australian law and the Customer hereby submits to the exclusive jurisdiction of the courts of South Australia.

21. **VARIATION.**

These Terms and Conditions may be varied by MECHVAC by notice in writing to the Customer. Notice will be deemed to have been given to the Customer 48 hours after any varied Terms and Conditions are posted on the MECHVAC website.

22. **SEVERANCE.**

If any part of these Terms and Conditions is invalid or unenforceable the remaining valid and enforceable Terms and Conditions shall remain in full force and effect.

23. **INDEMNITY BY CUSTOMER.**

Without prejudice to any other rights MECHVAC may have against the Customer, and to the extent permitted by the law, the Customer shall indemnify MECHVAC for, and save it harmless from, any loss, damage or expense (including, without limitation costs, whether or not the subject of a Court order) incurred by MECHVAC should the Customer breach any of these Terms and Condition