HeatNcool-Tech Pty Ltd.
13/756 Burwood highway Ferntree Gully VIC 3156
0382881784
contactus@heatncooltech.com.au

TERMS AND CONDITIONS

1. DEFINITIONS & START DATE

1.1.1. This Agreement is made between HeatNcool-Tech Pty Ltd.

1.1.2. ACN 162 173 373 ("HeatNCool-Tech") and the person/ business/ company to whom the accompanying quote is addressed ("the Customer").

1.1.3. This Agreement is comprised of the Quote and these Terms and Conditions.

1.1.4. The following terms have the meanings as set out in the Account Application:

(a) Customer – the person/business/company to whom the accompanying quote is addressed.

(b) Quote – The Quote accompanying these terms and conditions.

(c) Payment Terms – Payment in full within 7 Days of invoice or otherwise as per invoice.

(d) Services – such of the goods provided and services agreed to be performed by HeatNCool to the Customer at the rates specified in the Quote

1.1.5. This Agreement is made on the date shown the Quote is accepted or that HeatNCool otherwise agrees in writing or when HeatNCool commences supplying the Services.

2. AGREEMENT TO SUPPLY

2.1.1. HeatNCool shall supply the Services to the Customer in accordance with this Agreement.

2.1.2. HeatNCool reserves the right:

(a) to decline to accept any order from the Customer;

(b) to sell or continue to sell direct to other persons who may be competitors of the Customer;

(c) to vary the specification of the Services;

3. OBLIGATIONS OF THE CUSTOMER

3.1. Payment of Accounts

3.1.1. HeatNCool may require a deposit as set out in the Quote to be paid at the time the quote is accepted by the Customer.

3.1.2. The Customer shall pay HeatNCool in full for the Services in accordance with the Payment Terms whether or not any dispute exists between the Customer and HeatNCool about the amount required to be paid by the Customer under this Agreement.

3.1.3. In the event of a dispute existing between HeatNCool and Customer about the amount required to be paid by the Customer under this Agreement, HeatNCool may require, as a pre-condition to any attempt to resolve the dispute or the filing of any defence to litigation that HeatNCool nominate a solicitor to hold the amount claimed by HeatNCool but in dispute in trust as a stakeholder for the parties until the dispute is settled. Upon such request being made by HeatNCool, the Customer shall pay any amount claimed by HeatNCool to that solicitor's trust account.

3.1.4. Where HeatNCool has been provided with a credit card or direct debit authority on behalf of the Customer, HeatNCool shall be authorised to use that authority to arrange for payment of any amounts due under this Agreement.

3.1.5. To avoid doubt, terms relating to payment of accounts shall survive termination of this Agreement.

4. OBLIGATIONS OF HEATNCOOL

4.1. Maintain the price

4.1.1. HeatNCool shall change the price of the Services only in the following circumstances and shall advise the Customer of any revised price which will be binding on the Customer:

(a) in the event of an increase in the price to HeatNCool of any of the components used in supplying the Services;

(b) due to alterations made at the Customer's request;

4.2. Quality of Services

4.2.1. HeatNCool makes no other representations about the Services including the fitness of the Services for a particular purpose other than those made in writing by HeatNCool prior to the date of this Agreement.

4.3. Risk & Liability

4.3.1. The Customer is responsible to ensure that HeatNCool is made aware of any special requirements pertaining to the Services and that HeatNCool relies upon the integrity of the information supplied to it.

4.3.2. HeatNCool takes no responsibility if the specifications are wrong or inaccurate and the Customer will be liable for the expenses incurred by HeatNCool for any work required to rectify the Order.

4.3.3. The Customer acknowledges that HeatNCool shall not be liable for from loss or damage or for consequential loss or the damage of any kind arising out of the supply of the Services.

4.4. Delay

4.4.1. HeatNCool shall not be liable for any reasonable delay in supplying the Services to the Customer.

4.5. Warranty for Services

4.5.1. If there is any defect in any Service supplied by HeatNCool and the defect is reported to HeatNCool within seven (7) days of the provision of the Services and the defect is accepted by HeatNCool then HeatNCool will remedy the defective Service.

4.5.2. If any defective Services are repaired or altered without HeatNCool's consent, the warranty shall cease and HeatNCool shall not thereafter in any circumstances be liable under the terms of the warranty.

4.5.3. For defective Services where the Customer has complied with the conditions of warranty, HeatNCool's liability is limited to repairing the defective Service.

5. DEFAULT

5.1.1. Should any party default in this Agreement, the party not in default may give notice in writing to the party in default specifying the default and giving the party in default:

(a) if the default relates to the non payment of monies, seven (7) days, or;

(b) in any other case, thirty (30) days in which to remedy the default.

5.1.2. If the default relates to the non payment of monies, HeatNCool shall be entitled to charge interest on all amounts payable at the rate fixed by the Attorney-General under section 2 of the Penalty Interest Rate Act 1983 plus 2%, and if not paid, shall be added to the amount due to HeatNCool on the 1st day of each month and bear interest from that date.

6. TERM & TERMINATION

6.1. Termination

6.1.1. This Agreement shall continue unless terminated in accordance with this Clause.

6.1.2. A party may terminate this Agreement by giving notice in writing to the other party and obtaining the written consent of the other party to the termination in which case the Agreement ends on the date that the consent of the other party is given.

6.1.3. In the event of any of the following circumstances applying to a party, the other party may elect to terminate this Agreement by giving notice in writing to the party to which the circumstances apply:

(a) a default notified in accordance with clause 4.3 above remaining unremedied;

(b) the appointment of a Trustee in Bankruptcy, Liquidator, Receiver, Receiver and Manager or any other official management;

(c) entering into an arrangement or composition with creditors;

(d) a mortgagee, debenture holder, or other chargee taking possession of any property either in person or by an agent;

(e) a change in the ownership or control of a party;

(f) the occurrence of any event or circumstance which in the opinion of HeatNCool has or will detrimentally affect the financial position of the Customer or the Customer's ability to repay any payments made under this Agreement as they become due;

6.1.4. Upon termination, the following shall occur:

(a) HeatNCool shall provide an invoice to the Customer for any stock not already invoiced and shall provide a statement for invoices outstanding

(b) all monies payable under this Agreement become immediately due and payable.

7. GENERAL

7.1. Entire Agreement

7.1.1. This Agreement constitutes the entire Agreement between the parties and supersedes all previous communications, representations, inducements, undertakings or arrangements between the parties.

7.2. Severance

7.2.1. This Agreement is to be interpreted so that it does not infringe against the Acts of any Parliament of Australia or any regulations made under those Acts. If any provision is invalid or not enforceable, the remaining provisions which are self-sustaining and capable of separate enforcement shall continue in force.

7.3. Amendment

7.3.1. Any amendment to this Agreement must be in writing and signed by the parties.

7.4. Privacy Act Consent

7.4.1. In accordance with section 18K (1) (c) of the *Privacy Act 1988 (Cth)* or any similar legislation, the Customer authorises HeatNCool to use any information supplied by the Customer for the purposes of assessing the creditworthiness of the Customer including the obtaining a report from any credit reporting agency.

7.5. Notices

7.5.1. Any notice to be given under this Agreement shall be in writing and is deemed duly given if it is:

(a) left at that other party's address;

(b) sent by pre-paid mail to that other party's address; or

(c) transmitted by facsimile to that other

7.5.2. Any notice given to a party is deemed duly given and received:

(a) when delivered (in the case of it being left at that party's address);

(b) on the third business day after posting (in the case of it being sent by pre-paid mail); or

(c) on the day of transmission, if a business day, or, if not a business day, on the next business day (in the case of being transmitted by facsimile)

7.6. Costs of Recovery

7.6.1. The Customer shall pay HeatNCool for all costs incurred by HeatNCool in the recovery of any goods or monies owed (including those costs which may be contingent on recovery) by the Customer to HeatNCool under this Agreement including debt recovery agents costs, repossession costs, location search costs, process server costs and solicitor costs on a solicitor/client basis.

7.6.2. To avoid doubt, this term shall survive termination of this Agreement.

7.7. Agreed Use

7.7.1. The Customer forfeits any rights it may have against HeatNCool if the Services are used in a way they were not intended for, or they are altered without HeatNCool's consent.

7.8. Reservation of Rights

7.8.1. All rights not specifically and expressly granted to the Customer by this Agreement are reserved to HeatNCool;

7.9. Receipt

7.9.1. The receipt of money by either of the parties shall not prevent either of them from questioning the correctness of any statement in respect of any money.

7.9.2. To avoid doubt, this term shall survive termination of this Agreement.

7.10. Charge

7.10.1. If Customer is an individual, if any amount is overdue, the Customer agrees to charge his/her real and personal property to secure the indebtedness of the Customer to HeatNCool, and authorizes HeatNCool to lodge a caveat or register the charge on the Personal Property Securities Register until the overdue amount is received in full by

HeatNCool. The Customer shall also be liable for all costs incurred by HeatNCool arising from this clause on an indemnity basis.

7.10.2. If Customer is a company, if any amount is overdue, the Customer agrees to grant a fixed and/or floating charge over its assets in favour of HeatNCool and irrevocably authorizes HeatNCool to register the charge and HeatNCool's interest in the charge with the Personal Property Securities Register. The Customer shall also be liable for all costs incurred by HeatNCool under this clause on an indemnity basis.

7.11. Insurance

7.11.1. The Customer shall be responsible for whatever insurance cover it requires at its own expense.

7.12. Force Majeure

7.12.1. Both parties will be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulations or if any other cause beyond the reasonable control of the parties renders performance of the agreement impossible whereupon:

(a) all money due to HeatNCool shall be paid immediately; and

(b) the Customer shall forthwith cease to carry on the business provided that this clause shall only have effect at the discretion of HeatNCool except where such event renders performance impossible for a continuous period of 12 calendar months.

7.13. HeatNCool's Right to Assign

7.13.1. This Agreement and all rights under it may be assigned or transferred by HeatNCool without the consent of the Customer.

7.14. Waiver

7.14.1. The failure by HeatNCool to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

7.15. Time of the Essence

7.15.1. Time is of the essence in this Agreement in all respects (whether any extension of time or other indulgence has been given by one party to the other or not) and any breach of a time limit by one party will give the other parties the right to terminate this Agreement.

7.15.2. To avoid doubt, this term shall survive termination of this Agreement.

7.16. Governing Law

7.16.1. This Agreement is to be governed by the laws of the State of Victoria, Australia.