

Aireven Pty Ltd – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Aireven" shall mean Aireven Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Aireven Pty Ltd.</p> <p>1.2 "Buyer" shall mean the Buyer (or any person acting on behalf of and with the authority of the Buyer) as described on any quotation, work authorisation or other form as provided by Aireven to the Buyer.</p> <p>1.3 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Buyer on a principal debtor basis.</p> <p>1.4 "Goods" shall mean all Goods supplied by Aireven to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Aireven to the Buyer.</p> <p>1.5 "Services" shall mean all Services supplied by Aireven to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).</p> <p>1.6 "Price" shall mean the Price payable for the Goods as agreed between Aireven and the Buyer in accordance with clause 4 of this contract.</p> <p>2. The Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")</p> <p>2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including only those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.</p> <p>2.2 Where the Buyer buys Goods as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.</p> <p>3. Acceptance</p> <p>3.1 Any instructions received by Aireven from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by Aireven shall constitute acceptance of the terms and conditions contained herein.</p> <p>3.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.</p> <p>3.3 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are binding and may be amended with the written consent of Aireven.</p> <p>3.4 The Buyer shall give Aireven not less than fourteen (14) days prior written notice of any proposed change of ownership of the Buyer or any change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice). The Buyer shall be liable for any loss incurred by Aireven as a result of the Buyer's failure to comply with this clause.</p> <p>3.5 Goods are supplied by Aireven only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Buyer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.</p> <p>3.6 It shall be the Buyer's responsibility to inform Aireven in writing of all requirements the buyer has, particularly requirements contingent upon legislation and regulations relating to the end use of the Goods in the country or state of intended use, including all statutory or other like requirements relating to the marketing, labelling and/or packaging of products. Any failure of the Buyer to inform Aireven in writing of any such requirements shall not entitle the Buyer to refuse to accept the Goods, or pay the purchase Price, nor will Aireven be liable in any way whatsoever if the Goods fail to comply with any such requirements not disclosed to Aireven prior to the formation of any contract governed by these terms. The Buyer agrees to indemnify Aireven against any claims, loss or damage whatsoever arising that Aireven may incur as a result of the Buyers failure to comply with this clause.</p> <p>4. Price and Payment</p> <p>4.1 At Aireven's sole discretion the Price shall be either:</p> <p>(a) as indicated on invoices provided by Aireven to the Buyer in respect of Goods supplied; or</p> <p>(b) Aireven's quoted Price (subject to clause 4.2) which shall be binding upon Aireven provided that the Buyer shall accept Aireven's quotation in writing within thirty (30) days.</p> <p>4.2 Aireven reserves the right to change the Price:</p> <p>(a) in the event of a variation to Aireven's quotation; or</p> <p>(b) where due to any increase in the cost to Aireven of importing the Goods (including, without limitation, foreign exchange fluctuations or international freight costs).</p> <p>4.3 At Aireven's sole discretion a deposit may be required.</p> <p>4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.</p> <p>4.5 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, Aireven reserves the right to treat retentions as placing the Buyer's account into default.</p> <p>4.6 Payment will be made by cheque, or by bank cheque, or by credit card (plus a surcharge of up to five percent (5%) of the Price), or by direct credit, or by any other method as agreed to between the Buyer and Aireven.</p> <p>4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.</p> <p>5. Delivery of Goods</p> <p>5.1 At Aireven's sole discretion delivery of the Goods shall take place when:</p> <p>(a) the Buyer takes possession of the Goods at Aireven's address; or</p> <p>(b) the Buyer takes possession of the Goods at the Buyer's nominated address (in the event that the Goods are delivered by Aireven or Aireven's nominated carrier).</p> <p>5.2 At Aireven's sole discretion the costs of delivery are:</p> <p>(a) in addition to the Price; or</p> <p>(b) for the Buyer's account.</p> <p>5.3 The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then Aireven shall be entitled to charge a reasonable fee for redelivery.</p> <p>5.4 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.</p> <p>5.5 Aireven may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>5.6 The failure of Aireven to deliver shall not entitle either party to treat this contract as repudiated.</p> <p>5.7 Aireven shall not be liable for any loss or damage whatsoever due to failure by Aireven to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Aireven.</p> <p>6. Risk</p> <p>6.1 If Aireven retains ownership of the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery.</p> <p>6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, Aireven is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Aireven is sufficient evidence of Aireven's rights to receive the insurance proceeds without the need for any person dealing with Aireven to make further enquiries.</p> <p>6.3 Where the Buyer expressly requests Aireven to leave Goods outside Aireven's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Buyer's sole risk and it shall be the Buyer's responsibility to ensure the Goods are insured adequately or at all.</p> <p>7. Title</p> <p>7.1 Aireven and the Buyer agree that ownership of the Goods shall not pass until:</p> <p>(a) the Buyer has paid Aireven all amounts owing for the particular Goods; and</p> <p>(b) the Buyer has met all other obligations due by the Buyer to Aireven in respect of all contracts between Aireven and the Buyer.</p> <p>7.2 Receipt by Aireven of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Aireven's ownership or rights in respect of the Goods shall continue.</p> <p>7.3 It is further agreed that:</p> <p>(a) where practicable the Goods shall be kept separate and identifiable until Aireven shall have received payment and all other obligations of the Buyer are met; and</p> <p>(b) until such time as ownership of the Goods shall pass from Aireven to the Buyer Aireven may give notice in writing to the Buyer to return the Goods or any of them to Aireven. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease; and</p> <p>(c) Aireven shall have the right of stopping the Goods in transit whether or not delivery has been made; and</p> <p>(d) if the Buyer fails to return the Goods to Aireven then Aireven or Aireven's agent may (as the invilee of the Buyer) enter upon and into land and premises owned, occupied</p>	<p>or used by the Buyer, or any premises where the Goods are situated and take possession of the Goods; and</p> <p>(e) the Buyer is only a bailee of the Goods and until such time as Aireven has received payment in full for the Goods then the Buyer shall hold all proceeds from the sale or disposal of the Goods, up to and including the amount the Buyer owes to Aireven for the Goods, on trust for Aireven; and</p> <p>(f) the Buyer shall not deal with the money of Aireven in any way which may be adverse to Aireven; and</p> <p>(g) the Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Aireven; and</p> <p>(h) Aireven can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer; and</p> <p>(i) until such time that ownership in the Goods passes to the Buyer, if the Goods are converted into other products, the parties agree that Aireven will be the owner of the end products.</p> <p>8. Personal Property Securities Act 2009 ("PPSA")</p> <p>In this clause:</p> <p>(a) financing statement has the meaning given to it by the PPSA;</p> <p>(b) financing change statement has the meaning given to it by the PPSA;</p> <p>(c) security agreement means the security agreement under the PPSA created between the Buyer and Aireven by these terms and conditions; and</p> <p>(d) security interest has the meaning given to it by the PPSA.</p> <p>Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that these terms and conditions:</p> <p>(a) constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) create a security interest in:</p> <p>(i) all Goods previously supplied by Aireven to the Buyer (if any);</p> <p>(ii) all Goods that will be supplied in the future by Aireven to the Buyer.</p> <p>The Buyer undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Aireven may reasonably require to:</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, Aireven for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of Aireven;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Aireven; and</p> <p>(e) immediately advise Aireven of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>Aireven and the Buyer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.</p> <p>The Buyer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>The Buyer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>Unless otherwise agreed to in writing by Aireven, the Buyer waives its right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>The Buyer shall unconditionally ratify any actions taken by Aireven under clauses 8.3 to 8.5.</p> <p>9. Defects</p> <p>The Buyer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify Aireven of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford Aireven an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage.</p> <p>For defective Goods, which Aireven has agreed in writing that the Buyer is entitled to reject, Aireven's liability is limited to either (at Aireven's discretion) replacing the Goods or repairing the Goods except where the Buyer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.</p> <p>Goods will not be accepted for return other than in accordance with 9.1 above.</p> <p>Aireven at its sole discretion may agree to waive clause 9.2 and agree to the return of Goods, however all such returns will be subject to a re-stocking and handling fee of up to forty-five percent (45%) of the value of the returned Goods plus any freight costs.</p> <p>10. Warranty</p> <p>10.1 Unless otherwise negotiated and confirmed in writing (and subject to the conditions of warranty set out in clauses 10.2 & 10.3) Aireven warrants that if any defect in the Goods or any workmanship of Aireven becomes apparent and is reported to Aireven within twelve (12) months of the date of delivery (time being of the essence) then Aireven will either (at Aireven's sole discretion) replace or repair the Goods or rectify the workmanship.</p> <p>10.2 For Humidifiers the Buyer acknowledges that the fair wear and tear of working parts i.e. inlet valves, outlet valves and electrodes is dependent on water quality and the number of operating hours the Goods have been subjected to, therefore the warranty on these items are based on reasonable use. Reasonable use shall be determined at Aireven's sole discretion (for the sake of clarity Aireven does not consider reasonable use to be the continuous running of the Goods at or near full capacity).</p> <p>10.3 Subject to clauses 10.2 & 9.3 the conditions applicable to the warranty given by clause 10.1 are:</p> <p>(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:</p> <p>(i) failure on the part of the Buyer to properly maintain any Goods; or</p> <p>(ii) failure on the part of the Buyer to follow any instructions or guidelines provided by Aireven; or</p> <p>(iii) any use of any Goods otherwise than for any application specified on a quote or order form; or</p> <p>(iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or</p> <p>(v) fair wear and tear, any accident or act of God.</p> <p>(b) the warranty shall cease and Aireven shall thereaffer in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Aireven's consent.</p> <p>(c) in respect of all claims Aireven shall not be liable to compensate the Buyer for any delay in either replacing or remedying the workmanship or in properly assessing the Buyer's claim.</p> <p>10.4 For Goods not manufactured by Aireven, the warranty shall be the current warranty provided by the manufacturer of the Goods. Aireven shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.</p> <p>10.5 Unless otherwise agreed in writing between the parties, and to the maximum extent allowed by legislation, Aireven does not warrant that Goods will be suitable for any particular purpose.</p> <p>11. Default and Consequences of Default</p> <p>11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Aireven's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>11.2 In the event that the Buyer's payment is dishonoured for any reason the Buyer shall be liable for any dishonour fees incurred by Aireven.</p> <p>11.3 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify Aireven from and against all costs and disbursements incurred by Aireven in pursuing the debt including legal costs on a solicitor and own client basis and Aireven's collection agency costs.</p> <p>11.4 Without prejudice to any other remedies Aireven may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), Aireven may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. Aireven will not be liable to the Buyer for any loss or damage the Buyer suffers because Aireven has exercised its rights under this clause.</p> <p>11.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.</p> <p>11.6 Without prejudice to Aireven's other remedies at law Aireven shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to Aireven shall, whether or not due for payment, become immediately payable in the event that:</p> <p>(a) any money payable to Aireven becomes overdue, or in Aireven's opinion the Buyer will be unable to meet its payments as they fall due; or</p> <p>(b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.</p> <p>12. Security and Charge</p> <p>12.1 Despite anything to the contrary contained herein or any other rights which Aireven may have whatsoever:</p> <p>(a) where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Aireven or Aireven's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that Aireven (or Aireven's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.</p> <p>(b) should Aireven elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify Aireven from and against all Aireven's costs and disbursements including legal costs on a solicitor and own client basis.</p> <p>(c) the Buyer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Aireven or Aireven's nominee as the Buyer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.</p> <p>13. Cancellation</p> <p>13.1 Aireven may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. On giving such notice Aireven shall repay to the Buyer any sums paid in respect of the Price. Aireven shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>13.2 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any loss incurred by Aireven (including, but not limited to, any loss of profits) up to the time of cancellation.</p> <p>13.3 Cancellation of orders for Goods made to the Buyer's specifications or non-stocklist items will definitely not be accepted, once production has commenced.</p> <p>14. Privacy Act 1988</p> <p>14.1 The Buyer and/or the Guarantor's (herein referred to as the Buyer) agree for Aireven to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer in relation to credit provided by Aireven.</p> <p>14.2 The Buyer agrees that Aireven may exchange information about the Buyer with those credit providers either named as trade referees by the Buyer or named in a consumer credit report issued by a credit reporting agency for the following purposes:</p> <p>(a) to assess an application by the Buyer; and/or</p> <p>(b) to notify other credit providers of a default by the Buyer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Buyer.</p> <p>The Buyer understands that the information exchanged can include anything about the Buyer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.</p> <p>14.3 The Buyer consents to Aireven being given a consumer credit report to collect overdue payment on commercial credit (Section 18k(1)(h) Privacy Act 1988).</p> <p>14.4 The Buyer agrees that personal credit information provided may be used and retained by Aireven for the following purposes (and for other purposes as shall be agreed between the Buyer and Aireven or required by law from time to time):</p> <p>(a) the provision of Goods; and/or</p> <p>(b) the marketing of Goods by Aireven, its agents or distributors; and/or</p> <p>(c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods; and/or</p> <p>(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer; and/or</p> <p>(e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods.</p> <p>14.5 Aireven may give information about the Buyer to a credit reporting agency for the following purposes:</p> <p>(a) to obtain a consumer credit report about the Buyer;</p> <p>(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.</p> <p>14.6 The information given to the credit reporting agency may include:</p> <p>(a) personal particulars (the Buyer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);</p> <p>(b) details concerning the Buyer's application for credit or commercial credit and the amount requested;</p> <p>(c) advice that Aireven is a current credit provider to the Buyer;</p> <p>(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days; and for which debt collection action has been started;</p> <p>(e) that the Buyer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;</p> <p>(f) information that, in the opinion of Aireven, the Buyer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Buyers credit obligations);</p> <p>(g) advice that cheques drawn by the Buyer for one hundred dollars (\$100) or more, have been dishonoured more than once;</p> <p>(h) that credit provided to the Buyer by Aireven has been paid or otherwise discharged.</p> <p>15. Building and Construction Industry Security of Payments Act 1999</p> <p>15.1 At Aireven's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.</p> <p>15.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.</p> <p>16. General</p> <p>16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>16.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.</p> <p>16.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of NSW.</p> <p>16.4 Aireven shall be under no liability whatsoever to the Buyer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by Aireven of these terms and conditions.</p> <p>16.5 In the event of any breach of this contract by Aireven the remedies of the Buyer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.</p> <p>16.6 The Buyer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by Aireven nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>16.7 Aireven may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.</p> <p>16.8 The Buyer agrees that Aireven may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Aireven notifies the Buyer of such change.</p> <p>16.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>16.10 The failure by Aireven to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Aireven's right to subsequently enforce that provision.</p>
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Please note that a larger print version of these terms and conditions is available from Aireven on request.