



STANDARD TERMS AND CONDITIONS OF SALE

1. APPLICABILITY

- 1.1. Unless expressly agreed otherwise in writing by an authorised representative of Airwork:
 - 1.1.1. these Terms and Conditions apply to the sale of all goods and services by Airwork, and prevail over the terms of any other document, including any terms included or referenced in any purchase order issued by the Customer;
 - 1.1.2. notwithstanding anything that may be stated to the contrary in any Order, all Orders will be deemed to be acceptance by the Customer of these Terms and Conditions; and
 - 1.1.3. no action by Airwork will be deemed to be acceptance by Airwork of any terms proposed by the Customer or a waiver by Airwork of these Terms and Conditions.

2. ACCEPTANCE

- 2.1. Acknowledgement by Airwork of any Order will not constitute acceptance of it, and the Sales Contract will not be complete until such time as Airwork provides a formal written acceptance (which may be by way of email) or commences works in respect to the Order.

3. PRICE

- 3.1. Any quoted price remains fixed for 30 days or, where a period is specified in a quote, the period specified. Except to the extent that Airwork agrees to fix a price offered for a period of time, all prices are subject to change without notice at any time prior to Airwork accepting an Order.
- 3.2. Where no fixed price is given in advance of the date of delivery of the Goods and/or performance of the services all Orders will be met at prices prevailing at the date of delivery of the Goods and/or performance of the Services.
- 3.3. Where an estimate of the price is given in advance of the date of delivery of the Goods and/or performance of the Services Airwork reserves the right to amend the price.
- 3.4. Notwithstanding any other provision of the Sales Contract, if the final price is dependent on the condition of any Component then the price will be determined following inspection of that Component and final determination of the Services and Goods required to complete the Order.
- 3.5. If the supply of any Goods and/or services by the Customer is subject to GST then the Customer shall pay such tax, calculated at the applicable rate, at the time of payment of the charges.
- 3.6. All prices are exclusive of freight costs, insurance charges, duties, installation and maintenance costs unless otherwise agreed by Airwork and the Customer in writing.
- 3.7. Unless agreed by Airwork, all parts required for the provision of any services will be supplied by Airwork. Any parts supplied by the Customer will be subject to a surcharge equivalent to 25% of the retail price of the parts. Any parts that Airwork agrees may be supplied by the Customer will be in all respects at the sole risk and cost of the Customer, and the Customer releases Airwork from, and indemnifies Airwork against, any loss, cost, claim or expense arising out of or in respect of the fitting, operation or use of any Customer supplied parts.

4. TERMS OF PAYMENT

- 4.1. Payment is due in full in immediately cleared funds at the time of acceptance of the Order (unless Credit Terms have been arranged). Where Goods and/or services are supplied on Credit Terms, payment is due in full on the date agreed, or in the absence of agreement on the 20th of the month following the date of the invoice.
- 4.2. Payment of all monies must be made without set off or deduction of any kind. If the Customer is required by law to make any deduction or withholding from any amount due then the Customer will pay to Airwork such additional sum as may be required to ensure that Airwork receives from the Customer an amount equivalent to the entire invoiced amount.
- 4.3. Airwork may, at its absolute discretion at any time:

- 4.3.1. agree to extend credit to the Customer;
- 4.3.2. determine any terms or limits to apply to the provision of any credit;
- 4.3.3. vary, amend or suspend any credit terms from time to time, including increasing or decreasing any credit limit.
- 4.4. If any payment received or recovered by Airwork in respect of any Goods or Services supplied by Airwork is avoided by, or is required to be refunded or repaid under, or is required to be accounted for under, any applicable law (including any law relating to preferences or insolvency), then:
 - 4.4.1. That payment or application will be deemed not to have discharged or affected the liability or obligation in respect of which the payment or application was received or made; and
 - 4.4.2. Airwork and the Customer will, to the maximum extent permitted by law, be deemed to be returned to the position in which each would have been, and will be entitled to exercise all the rights which each would have had, if that payment had not been received or recovered.

5. DELIVERY

- 5.1. Except where Airwork has agreed to deliver any Goods or Component to the Customer's premises, all deliveries shall be at Airwork's Facility. Subject to any rights the Customer may have under the Consumer Guarantees Act 1993, Airwork is not liable for, and the Customer releases Airwork from and indemnifies Airwork against, any loss or damage to the Goods or Component during transportation even though such loss or damage may be caused or contributed to by Airwork's negligence or other default.
- 5.2. Dates given for shipment or delivery are stated in good faith but are indicative only. Airwork shall not be responsible or liable in any way to the Customer or any other party for cost, loss damage or expense sustained due to any delay.
- 5.3. Airwork will notify the Customer when any Goods and/or Components are available for Delivery. The Customer shall take delivery of the Goods and/or Component within 2 business days of the date of availability or such later period as may be agreed, provided that Airwork has no obligation to release any Goods and/or Components until such time as payment has been received. Where the Customer does not take delivery of the Goods and/or Component within the agreed period, the Customer shall, upon invoice by Airwork, pay storage costs (as determined by Airwork) from the date of availability until the date the Customer takes delivery of the Goods and/or Components.
- 5.4. Any claim in respect of any discrepancy in Goods delivered must be made in writing to Airwork within 2 business days of delivery, and no claim will be accepted unless it is made in accordance with this clause.
- 5.5. Delivery by Airwork to a carrier or other third party acting for the Customer shall be deemed to be delivery to the Customer.
- 5.6. Airwork shall be relieved of its obligations under a Sales Contract, and entitled to cancel or suspend delivery of the Goods and the performance of any services or to amend any quantity of Goods to be supplied in the event of any delay or non-performance due directly or indirectly to any event beyond Airwork's reasonable control, including (without limitation): wars; strikes; lockouts; delay or defaults of manufacturers or suppliers; or acts of God or nature. Airwork shall have no liability to, and the Customer releases Airwork from, all loss, cost, damage or expense arising from or in consequence of any such cancellation, suspension or amendment.

6. DEFAULT

- 6.1. If the Customer defaults in, or Airwork considers that the Customer may be unable to meet, any payment obligation to Airwork, Airwork may:
 - 6.1.1. demand payment of all or part of any sums owing irrespective of the due date;
 - 6.1.2. require security for such obligations to its full satisfaction before any further supplies are made to the Customer; and
 - 6.1.3. without notice withhold supplies of Goods and services ordered or requested by the Customer.

- 6.2. Without prejudice to Airwork's other remedies, if the Customer fails to make payment on the Due Date shall pay to Airwork interest calculated and compounded daily on the amount due from the Due Date until the actual date of payment at a rate equal to 5% above the then current overdraft rate which Airwork has with its principal trading bank.
- 6.3. Without prejudice to Airwork's other rights and remedies, if:
 - 6.3.1. any of the circumstances described in clause 6.3.2 apply; or
 - 6.3.2. the Customer is in breach of any of any Sale Contract with Airwork, and in particular if the Customer makes default in payment or fails to take delivery on the specified time, Airwork shall be entitled to cancel any Sales Contract and seek damages accordingly.
- 6.4. The following shall constitute events of default by the Customer:
 - 6.4.1. Non-payment of any sum by the Due Date;
 - 6.4.2. The Customer intimates that it will not pay any sum by the Due Date;
 - 6.4.3. Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods;
 - 6.4.4. Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to Airwork remains unpaid;
 - 6.4.5. The Customer is bankrupted or put into liquidation or a receiver or administrator is appointed to the Customer or any of the Customer's assets, or the Customer gives notice of a proposed compromise with all or any of its creditors;
 - 6.4.6. A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days);
 - 6.4.7. Any material adverse change in the financial position of the Customer;
 - 6.4.8. If the Customer no longer carries on business or threatens to cease carrying on business;
 - 6.4.9. If the ownership or effective control of the Customer is transferred or the nature of the Customer's business is materially altered; or
 - 6.4.10. The Customer, in Airwork's opinion, acts unreasonably to delay delivery or refuses to accept delivery of any Goods, Component or services.
- 6.5. The Customer indemnifies Airwork against all costs, including costs on a solicitor-client basis and debt collectors' costs, incurred in the recovery or attempted recovery of outstanding moneys and the enforcement of these Standard Terms and Conditions.
- 6.6. Payments by the Customer shall be applied first in reduction of interest, liquidated damages and costs due pursuant to this clause, the balance then being in reduction of any amounts due pursuant to clauses 3 or 4.

7. OWNERSHIP AND RISK

- 7.1. In this clause 7 unless context otherwise requires:
 - 7.1.1. PPSA means the Personal Property Securities Act 1999; and
 - 7.1.2. The terms accession, collateral, Purchase Money Security Interest, financing change statement, financing statement, security interest, and verification statement have the respective meanings given to them in the PPSA.
- 7.2. Risk in the Goods shall pass to the Customer on despatch of the Goods from Airwork's premises. Risk in any Component remains with the Customer throughout the period in which the Component is in Airwork's care, custody or control or in transit to, from or between any Airwork Facility. The Customer releases Airwork from any liability in respect of any damage to any Goods or Component arising while the risk in such Goods or Component lies with the Customer under these Terms and Conditions.
- 7.3. The Customer shall:

- 7.3.1. maintain appropriate insurance, including transit and hull and liability insurances, to the extent relevant, over any Component at all times whilst any Component is in transit or in Airwork's care, custody or control;
- 7.3.2. where title has not passed at the date Goods are made available at Airwork's Facility, insure the Goods in the name of Airwork and the Customer for their respective interests until such time as payment is made and title passes under these terms.
- 7.4. Notwithstanding any period of credit granted by Airwork, legal and beneficial title and ownership of any and all Goods supplied by Airwork passes to the Customer only when the Customer has made payment in full and in cleared funds for all Goods and services provided by Airwork and for any other amounts owing by the Customer to Airwork from time to time.
- 7.5. For the avoidance of doubt clause 7.4 also applies to Goods which are or have attached, fixed, installed, mixed or incorporated in any way into any Component or other goods of the Customer or in any goods in respect of which the Customer has rights.
- 7.6. Until ownership in any Goods passes to the Customer, the Customer holds the Goods as fiduciary, bailee and agent for Airwork and will store the Goods in such manner that they are clearly identifiable as the property of Airwork and will keep separate records in respect of the Goods.
- 7.7. By agreeing to purchase the Goods and services from Airwork, and for the purposes of section 36(1) of the PPSA, as security for payment of the Goods and services and for all other amounts owing by the Customer to Airwork from time to time, and for the performance by the Customer of all the Customer's other obligations to Airwork from time to time, the Customer grants to Airwork the following security interests:
 - 7.7.1. A Purchase Money Security Interest over Goods and the proceeds of the Goods, existing until the debt owed by the Customer in respect of those Goods is paid in full.
 - 7.7.2. A security interest over all Goods and their proceeds until Airwork discharges its security interest.
 - 7.7.3. A security interest in all the Customer's right, title and interest in all of the Customer's other present and after acquired property being all of the Customer's personal property and all of the Customer's other property (including land) which will be on the terms of the standard form of General Security Agreement most recently published by the Auckland District Law Society at the date of these Standard Terms and Conditions (including any memorandum of terms and conditions referred to in that agreement).
- 7.8. Each security interest is a continuing interest irrespective of whether there may be monies or obligations owing by the Customer to Airwork at a particular time.
- 7.9. Airwork may register a financing statement in respect of its security interests. The Customer waives its right to receive a copy of any verification statement confirming registration of a financing statement or financing change statement.
- 7.10. The Customer agrees to do anything Airwork reasonably requires to ensure it has perfected security interests, including signing any further documents and/or providing any further information (such information to be complete, accurate and up to date in all respects), which Airwork may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register.
- 7.11. The Customer gives irrevocable authority to Airwork to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer, or before default if Airwork believes a default is likely, and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are installed or incorporated. Airwork will not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Airwork may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all liabilities and expenses (including legal expenses, repossession, storage and selling costs) incurred by Airwork in enforcing or



attempting to enforce its rights under these Standard Terms and Conditions) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as Airwork determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.

- 7.12. Where Goods are retained by Airwork pursuant to clause 7.11, the Customer waives the right to receive notice under s.120 of the PPSA and to object under s.121 of the PPSA.
- 7.13. The rights of the Customer under sections 114(1)(a), 125, 126, 127, 129, 131 and 132 of the PPSA do not apply, and the Customer expressly waives those rights. Sections 133 and 134 of the PPSA do not apply.
- 7.14. Airwork may in its discretion allocate any payment received from the Customer towards any interest, costs, invoice or portion of an invoice that Airwork determines (in any order that Airwork determines) and may do so at the time of receipt or at any time afterwards and on default by the Customer, Airwork may reallocate any payments previously received and allocated. In the absence of any payment allocation by Airwork, payment shall be deemed to be allocated in such manner as preserves the maximum value of Airwork's Purchase Money Security Interest in the Goods.

8. CREDITS

- 8.1. Credits sought for returned Goods are at Airwork's exclusive discretion and the goods must be:
 - 8.1.1. returned within seven days of receipt;
 - 8.1.2. returned free into Airwork's store, all transportation charges, insurance, taxes duties and additional charges being borne by the Customer;
 - 8.1.3. in as new condition in Airwork's original containers, unsoiled and undamaged; and 8.1.4. accompanied by the number and date of supplying invoice.

9. SUPPLY FOR BUSINESS PURPOSE

- 9.1. Where the Customer purchases any Goods for the purposes of a business, it is hereby agreed that the provisions of the Consumer Guarantees Act 1993 do not apply in accordance with section 43(2) of the Act.
- 9.2. Where:
 - 9.2.1. the Customer supplies the Goods and/or services to any customer of the Customer and that supply would otherwise be subject to the provisions of the Consumer Guarantees Act 1993; and
 - 9.2.2. the Customer's customer acquires or holds himself or herself out as acquiring the goods and/or services for business purposes in terms of Sections 2 and 43 of the Consumers Guarantees Act 1993,
 - 9.2.3. then the Customer will obtain the agreement of the Customer's customer that the Consumer Guarantees Act 1993 will not apply to the supply to the Customer's customer.
- 9.3. Where the Customer fails to comply with sub-clause 9.2, the Customer will indemnify Airwork against any liability incurred by Airwork arising out of that failure.

10. WARRANTIES AND CONDITIONS

- 10.1. This clause shall apply where the Customer is not a Consumer.
- 10.2. Except as provided in any express warranty given by Airwork, no warranty or condition shall be implied against Airwork by any statute, at common law or otherwise and no representation, express condition, warranty or variation of these Standard Terms and Conditions shall be binding on Airwork unless it is in writing and signed for or on behalf of Airwork.
- 10.3. Where the goods or any of them are subject to any express warranty given by Airwork to remedy any defect by repairing or replacing the goods with goods of identical type, then the ultimate consumer shall not be able to exercise its remedies set out in the Consumer Guarantees Act 1993 without first giving Airwork a reasonable opportunity to remedy the defect by repair or replacement in accordance with its express warranty.

- 10.4. Goods returned under warranty must be returned free in to Airwork's store, all transportation charges, insurance, taxes, duties and charges being borne by the Customer.

11. GUARANTEES AND CONDITIONS

- 11.1. This clause shall apply where the Customer is a Consumer.
- 11.2. Subject to the rights and remedies contained in the Consumer Guarantees Act 1993, if, as the result of some fault on Airwork's part, the goods supplied are defective in that:
- 11.2.1. they are not of acceptable quality; or
- 11.2.2. they are not reasonably fit for any particular communicated purpose where the Consumer has reasonably relied on Airwork's skill or judgement; or
- 11.2.3. they do not comply with the description given to the Consumer before purchase; or
- 11.2.4. they do not comply with the sample of demonstration model shown to the Consumer before purchase,
- 11.2.5. then the Consumer must notify Airwork within seven (7) days of when such defect was discovered or ought to have been discovered and, where possible, return the goods to Airwork.
- 11.3. Where appropriate, Airwork will remedy the defect by way of repair, replacement, or (if necessary) refund.
- 11.4. Where the defect cannot be remedied or is of a substantial character, Airwork will refund the Consumer's money (subject to Court order) or replace the Goods, or compensate the Consumer for the amount of any reduction in value of the goods below the price paid or payable.
- 11.5. Subject to the rights and remedies contained in the Consumer Guarantees Act 1993, if, as the result of some fault on Airwork's part, the services supplied are defective in that:
- 11.5.1. they have not been carried out with reasonable care and skill; or
- 11.5.2. they are not reasonably fit for any particular communicated purpose and/or are of such a nature and quality that they cannot reasonably be expected to achieve any particular result, when the Consumer has reasonably relied on Airwork's skill or judgement; or
- 11.5.3. they are not completed within a reasonable time where the time for completion has not been fixed by the Customer and Seller,
- 11.5.4. then the Consumer must notify Airwork within seven (7) days of when such defect was discovered or ought to have been discovered.
- 11.6. Where appropriate, Airwork will remedy the defect.
- 11.7. Where the defect cannot be remedied, or is of a substantial character, Airwork will refund the Consumer's money (subject to Court order) or compensate the Customer for the amount of any reduction in value of the product of the service below the price paid or payable.
- 11.8. With the exception of the relevant statutory warranties contained in the Consumer Guarantees Act 1993, no warranty or condition shall be implied against Airwork by any other statute, at common law or otherwise and no representation, express condition, warranty or variation of the Standard Terms and Conditions shall be binding on Airwork unless it is in writing and signed for or on behalf of Airwork.
- 11.9. Where the goods or any of them are subject to any express warranty given by Airwork to remedy any defect by repairing or replacing the goods with goods of identical type, then the Consumer shall not be able to exercise its remedies set out in the Consumer Guarantees Act 1993 without first giving Airwork a reasonable opportunity to remedy the defect by repair or replacement in accordance with its express warranty.
- 11.10. Goods returned under express warranty for the purposes of remedying any defect must, where practical be returned free into Airwork's store, all transportation charges, insurance, taxes, duties and charges being borne by the Consumer.

12. CLAIMS

- 12.1. This clause shall apply where, pursuant to these Standard Terms and Conditions, the Customer has a claim which is not subject to the Consumer Guarantees Act 1993.
- 12.2. Where goods are returned by the Customer then Airwork may, in its sole discretion, repair the goods or make a reasonable allowance on the purchase from Airwork of replacement goods, provided that the following conditions are met:
- 12.2.1. all claims must be received by Airwork within seven (7) days of delivery of the goods;
- 12.2.2. all claims must be accompanied by the number and date of supplying invoices;
- 12.2.3. all claims must specifically identify the defect and if applicable be accompanied by the defective goods; and
- 12.2.4. Airwork shall have a reasonable opportunity to investigate the claim.
- 12.3. Goods returned must be returned free into Airwork's store, all transportation charges, insurance, taxes, duties and additional charges being borne by the Customer.
- 12.4. Where any claim is made by the Customer in respect of any service supplied by Airwork, then Airwork may, in its sole discretion, remedy any defect in the service or make a reasonable allowance on the purchase from Airwork of replacement services, provided that the following conditions are met:
- 12.4.1. all claims must be received by Airwork within seven (7) days of performance of the service by Airwork;
- 12.4.2. all claims must be accompanied by the number and date of supplying invoices;
- 12.4.3. all claims must specifically identify the defect and if applicable be accompanied by the defective goods; and
- 12.4.4. Airwork shall have a reasonable opportunity to investigate the claim.
- 12.5. Where the claim arises in relation to services performed on or in respect of any property, the Customer must return that property free into Airwork's premises, all transportation charges, insurance, taxes, duties and additional charges being borne by the Customer.
- 12.6. If claims are not received in accordance with the requirements specified in subclause 12.2.1 and/or subclause 12.3.1, the Customer shall be conclusively deemed to have accepted the goods and/or services and Airwork shall not incur any subsequent liability whatsoever in relation to the goods.

13. LIMITATION OF LIABILITY

- 13.1. Airwork's liability in any case of defect or fault, shall be limited to the purchase price of the Goods and/or the Services in respect of which such liability arises. Airwork shall have no further liability or responsibility for any direct, indirect or consequential injury, loss, cost, expense or damage whatsoever and howsoever arising PROVIDED THAT this subclause shall not prevent a Customer who is a Consumer from exercising any remedies that Customer may have under the Consumer Guarantees Act 1993.
- 13.2. Airwork shall not be responsible for any damage whatsoever caused either to the Goods supplied or as a result of the malfunction of such Goods if:
- 13.2.1. the Goods (or any Component within which the Goods are installed) are fitted by an unqualified tradesman; or
- 13.2.2. the Goods are fitted in an untradesmanlike manner; or
- 13.2.3. the Goods are in any way adapted or put to a use for which they are not specifically intended; or
- 13.2.4. the Goods are added to or repaired using components not recommended or approved by the manufacturer of such Goods; or
- 13.2.5. the Goods are improperly transported, operated or stored.

14. GENERAL PROVISIONS

- 14.1. If any of these Standard Terms and Conditions or of any Sales Contract are held by a Court to be invalid, void or ineffective by virtue of illegality or otherwise, then such condition, or part of it, shall be severed from all other conditions without affecting the validity or enforceability of all other conditions of part of them.
- 14.2. Customer may not assign, transfer or otherwise deal with any Sales Contract without Airwork's prior written consent.
- 14.3. Airwork may vary these Terms and Conditions from time to time, and the Customer agrees that any such variation will be effective from the date of publication of such terms on Airwork's website or any earlier delivery to the Customer. It is the Customer's responsibility to review the terms prior to placing any Order or entering into any Sales Contract.

15. INTERPRETATION

- 15.1. Unless the context requires otherwise, in these Standard Terms and Conditions of Sale:

Airwork means Airwork (NZ) Ltd and its successors and assigns;

Airwork's Facility means the Airwork facility at which the Services are to be performed, as determined in the Sales Contract or by Airwork;

Component means any item in respect of which the Customer has requested Airwork to provide services, which may include the installation of Goods;

Customer means any purchaser of goods or services from Airwork, whether under cash or credit terms;

Consumer means a consumer as defined in Section 2 of the Consumer Guarantees Act 1993 but does not include a Customer, who, by clause 9 of these Terms and Conditions, has contracted out of that Act;

Credit Terms means Airwork's Customer Account Terms, as amended from time to time;

Due Date means the due date for payment as determined under clause 4 or as otherwise determined under the Sales Contract.

Goods means all goods supplied by Airwork, including as part of the provision of any services and, in respect of each order of goods from the Customer accepted by Airwork, includes the goods described in the invoice issued by Airwork in respect of the relevant order and any services related thereto.

GST means Goods and Services Tax in accordance with the Goods and Services Tax Act 1985, or any other applicable consumption tax applicable to the sale of the Goods and/or Services.

Order means any request or purchase order, in whatever form, issued by the Customer for the supply of goods and / or services by Airwork. Orders are an irrevocable offer by the Customer to purchase the stated goods and services in accordance with these Terms and Conditions and such other conditions as Airwork may accept;

Sales Contract means any contract between Airwork and the Customer comprising these Terms and Conditions together with any relevant quote or estimate provided by Airwork, any documents or materials Airwork intends to be part of such contract, and the Order placed by the Customer (but excluding any Customer terms not expressly accepted by Airwork);

Terms and Conditions means these Standard Terms and Conditions of Sale together with Airwork's Credit Terms (where relevant).