



TERMS AND CONDITIONS OF SALE

1. GENERAL

Unless the context otherwise requires:

Account Application Form means an application for credit on the form provided by Daikin.

Agreement means these Terms and Conditions of Sale which apply to the supply of Goods and Services by Daikin to the Customer.

Carbon Pollution Reduction Scheme means the Carbon Pollution Reduction Scheme proposed by the Australian Government scheduled to commence on 1 July 2010.

Customer means the party to whom Daikin has agreed to supply Goods and Services pursuant to the Agreement.

Daikin means Daikin Australia Pty Ltd.

Goods means the goods and/or services agreed to be supplied by Daikin and purchased by the Customer pursuant to the Agreement.

GST has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Order means an order by the Customer for Daikin to supply the Goods and Services in accordance with any Quotation issued by Daikin.

Quotation means any quotation issued by Daikin to a Customer for the supply of Goods or Services.

Quotation Rate means the Australian dollar to the US dollar (and/or Australian dollar to Euro dollar) exchange rate as certified by Daikin.

Services means all or any part of the services to be provided by Daikin pursuant to the Agreement.

Works means the work set out in the Agreement, and includes the provision of the Goods and/or Services.

2. QUOTATIONS

- 2.1 Any Quotations given by Daikin to the Customer will remain valid for a period of 30 days from the date when the Quotation was given or such other period as nominated by Daikin in the Quotation. Thereafter the Quotation will lapse.
- 2.2 The Customer acknowledges that any Quotation given by Daikin is based on information given to Daikin by the Customer and Daikin does not in any way guarantee that it meets any specifications generated by the Customer and it is the responsibility of the Customer to review and confirm the contents of the Quotation.
- 2.3 The Quotation for Goods shall be based on the Quotation Rate and is subject to rise and fall until the formation of the Agreement.
- 2.4 Daikin reserves the right to vary the price of the Quotation based on the current Quotation Rate as certified by Daikin for Goods which are subject to exchange rate rise and fall. Any Services included in the Quotation are fixed price and valid for the duration of the Quotation.
- 2.5 The price for which Daikin provides the Goods and Services shall be fixed from the date of the acceptance of the Order.

3. ORDERS

- 3.1 In order to purchase the Goods and Services, the Customer must place with Daikin an Order setting out a full description of the Goods to be purchased, the delivery date, delivery point and any other information required by Daikin. The Order may be accepted or rejected by Daikin at Daikin's sole discretion.
- 3.2 A contract shall be formed by and upon Daikin accepting in writing from the Customer an Order pursuant to clause 3.1 and each contract shall be governed by the Agreement.
- 3.3 The Agreement shall take precedence over any other representations, agreements, arrangements or understandings relating to the Goods and Services, and any matters in connection with the Goods and Services.
- 3.4 Any conditions or terms of purchase submitted by the Customer deviating from or inconsistent with the Agreement will not bind Daikin, notwithstanding any statement by the Customer that its terms and conditions prevail over the Agreement.

4. SUPPLY OF INFORMATION

- 4.1 As soon as practicable after entry into this Agreement, the Customer shall supply Daikin with all information required by Daikin to manufacture the Goods and to provide the Services.
- 4.2 The Customer warrants the accuracy of all the information it provides to Daikin and acknowledges that Daikin shall not be responsible for any damage or loss in respect of any inaccuracy or a failure by the Customer to provide adequate information. In the event that any inaccuracy in the information provided by the Customer results in additional costs being incurred by Daikin, the Customer agrees to reimburse Daikin for these costs.
- 4.3 Daikin reserves the right at any time to make reasonable modifications to the Goods. In the event that Daikin exercises this

right, it will attempt to give the Customer prior notice of the modifications.

5. TESTING

The costs of any tests to be performed on the Goods prior to the Goods being delivered shall be borne by the Customer unless otherwise agreed to in writing by Daikin. Any tests requested by the Customer must be agreed to by Daikin and be carried out at a time mutually convenient to both parties.

6. CREDIT FACILITIES AND PAYMENT

- 6.1 Credit facilities are only available to the Customer if the Customer has completed an Account Application Form and the Account Application Form has been approved by Daikin in writing.
- 6.2 The provision of a credit account to the Customer may be withdrawn by Daikin at any time.
- 6.3 Where an Account Application Form:
- 6.3.1 has not been applied for or approved by Daikin, payment for Goods must be made as at the date that Daikin accepts the Order; or
- 6.3.2 has been approved by Daikin, payment for Goods supplied under the credit facilities must be paid to and received by Daikin within 30 days from the end of the month in which all the Goods are delivered or where the Goods are delivered in part then payment for those received Goods will be paid within 30 days from the end of the month in which the received Goods are delivered.

6.4 If the Customer does not pay money by the due date for payment, or a payment made by the Customer fails to be honoured, without prejudice to any other rights which it may have against the Customer, Daikin may require the Customer to pay on demand interest at the National Australia Bank Limited Prime Lending Rate effective from time to time plus 3% per annum calculated from the due date on daily balances of amounts unpaid.

6.5 The Customer must not set off any money owing or alleged to be owing by Daikin against money due by the Customer to Daikin.

6.6 All prices on Daikin's Quotations are specified to be in Australian dollars and are subject to alteration without notice.

6.7 The total purchase price, unless otherwise stated in the Order, includes GST (unless stated otherwise), delivery charges to project kerbside and packaging but does not include any lifting or carriage costs, assembly costs, installation costs, costs and charges of third party suppliers such as electricians, insurance or any statutory, sales, excise, or other taxes, duties or imposts, all of which will be paid by the Customer.

7. CANCELLATION OF ORDERS

The Customer may not alter or cancel an Order without Daikin's prior written consent. If Daikin agrees to alter or cancel the Order, the Customer will indemnify Daikin against any loss, damage and expense incurred by Daikin in relation to the alteration or cancellation of that Order, including the cost of return freight, return shipping to factory of origin, items purchased from third parties for inclusion in the Goods and all labour and engineering costs incurred by Daikin in the execution or part execution of the Goods and including compensation payable to any of Daikin's suppliers and loss of profit.

8. RETURN OF GOODS

Goods may not be returned except with written consent from Daikin. When Goods are so returned all monies payable to Daikin will remain due and payable, subject to discount, reimbursement, restocking fees or other conditions as stated in the written consent.

9. DELIVERY AND STORAGE

9.1 Upon receipt of the Customer's Order and Daikin's written acceptance of that Order, Daikin will provide the Customer with an estimated date for delivery or consignment date. The estimated date given at this time will take precedence over all other dates put forward by either party during the sales process.

9.2 All quoted delivery or consignment dates are estimates only. Daikin is not obliged to meet such dates and will not be liable to the Customer by reason of delays caused by any reason whatsoever.

9.3 Daikin is deemed to have delivered the Goods when the Goods are actually delivered to the project address kerbside nominated by the Customer, or where delivery to the delivery point is not made due to reasons which are the responsibility of the Customer, the date when delivery would have been effected. Daikin Quotations include delivery and insurance to project kerbside and excludes any lifting or craneage costs at project site or nominated delivery address.

9.4 All deliveries shall be made during normal business hours. Any additional costs for delivery outside of normal business hours shall be at a cost to the Customer.

9.5 Daikin may deliver the Goods by instalments (where, in Daikin's opinion, this is reasonable) and issue interim invoices to the Customer.

9.6 The Customer shall indemnify and keep indemnified Daikin against any loss or damage which occurs during removal of the Goods from the truck and installation. Where the Works provide for the purchase of Goods only, the Works shall be deemed completed upon delivery in accordance with the Agreement.

9.7 In the event that the Customer fails to take delivery of the Goods within fourteen (14) days of the date notified by Daikin to the Customer as the nominated delivery date, Daikin reserves the right to charge the Customer reasonable storage costs until such time as the Goods are delivered to the Customer's premises. These storage costs will be invoiced to the Customer on a monthly basis. In the event that Daikin does not invoice these costs on a monthly basis, the parties agree that Daikin does not waive its right to invoice these costs at a later date.

9.8 Without limiting any other provision of the Agreement, failure by the Customer to pay any instalment, or any other amount when due, will entitle Daikin to withhold or delay delivery of any remaining Goods ordered.

9.9 For delivery of the Goods, the Customer shall provide Daikin with adequate and safe entry and access to the premises when required, and with all necessary equipment and services required, for the removal of the Goods from the truck, at the Customer's cost.

9.10 The Customer shall provide Daikin with adequate and safe entry and access to premises when required, and all equipment and services required, to properly provide the Services. Any such failure or delay will entitle Daikin to a corresponding extension of time for Daikin to complete the Works.

9.11 Daikin shall not be liable for any loss or damage arising from or related to any failure or delay in providing entry, access, equipment or services as required by this Clause, and any additional costs incurred by Daikin arising from or related to any such shall be borne by the Customer.

9.12 Should Daikin be prevented from delivering any of the Goods to the Customer or performing any Services in accordance with the Agreement by reason of any event beyond Daikin's control, including but not limited to industrial disputes, acts of parliament, fires, floods, acts of God and Daikin's inability to procure materials or components from its usual sources of supply, Daikin shall be entitled at its own option:

9.12.1 to delay performance of the Works; or

9.12.2 to terminate the Agreement,

and the Customer will not in consequence be entitled to recover any damage or loss as a result of such delay or termination.

10. TITLE AND RISK

10.1 Title to the Goods shall remain with Daikin until all monies owing by the Customer to Daikin have been paid in full (whether such monies are payable under a specific contract or on any other account).

10.2 Until such time as the Customer has paid in full all monies owing to Daikin, the Customer shall:

10.2.1 store the Goods separately and mark them so that they are clearly and easily identifiable as Daikin's property and, if Daikin requests, inform Daikin of the location of the Goods;

10.2.2 hold the Goods as bailee for Daikin;

10.2.3 indemnify Daikin against any claim arising out of the possession, use or disposal of the Goods by the Customer or repossession or attempted repossession by Daikin.

10.3 If:

10.3.1 a payment is not made in accordance with the Agreement;

10.3.2 the Customer commits any other breach of the Agreement; or

10.3.3 the Customer becomes bankrupt, has an administrator, a receiver or a receiver and manager appointed, goes into liquidation (whether voluntarily or otherwise), or is wound up, dissolved or declared insolvent,

then Daikin may at any time, without notice to the Customer and without prejudice to any other rights that it may have against the Customer:

10.3.4 terminate the Agreement; or

10.3.5	suspend some or all its obligations to the Customer under the Agreement; and	The Customer's responsibility to ensure that the Goods and the use to which they are put comply with the laws of the destination.	21.2	If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.
10.3.6	enter upon any premises owned or occupied by the Customer where Daikin reasonably believes the Goods may be stored and repossess the Goods without being liable for any damage caused.	14.2 Unless otherwise stated in the Quotation, the warranty and Services provided for the Goods are only applicable for project sites in Australia.	21.3	Daikin shall not be liable for any failure to fulfill or any delay in fulfilling any obligation arising under the Agreement if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain raw materials or fuel, fire or explosion, any government action or any other cause beyond Daikin's reasonable control and not as a consequence of Daikin's negligence.
10.4	If the Customer sells the Goods before payment in full to Daikin, or uses the Goods in a manufacturing or construction process of its own or some third party, the Customer holds the proceeds on trust for Daikin in respect of those Goods, and must keep such proceeds in a separate account until the liability to Daikin is discharged and must immediately pay that amount to Daikin.	14.3 If the Customer resells the Goods, it shall not, in connection with their resale, pay or offer to pay, money or any thing of value to any government official, entity or organization, any political party, any candidate for public office, or their employees or relatives, for the purpose of influencing purchasing decisions or for any other improper purpose.		
10.5	The risk in the Goods passes to the Customer at the time of delivery.	15. CARBON POLLUTION REDUCTION SCHEME	21.4	Any notice to be given to a party under the Agreement must be in writing and must be sent by post, facsimile or email to the address of that party shown in the quotation, Order or order acknowledgment. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received.
11. INSURANCE		If the introduction of the Carbon Pollution Reduction Scheme results in an additional financial burden to Daikin in respect of or in relation to the manufacture or supply of the Goods, then Daikin shall be entitled to pass on to The Customer the reasonable net cost that is incurred by Daikin in relation to the introduction of the Carbon Pollution Reduction Scheme.	21.5	The Agreement is governed by and must be interpreted in accordance with the laws of New South Wales. The Customer unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales determined in accordance with this clause.
The Customer must keep the Goods insured against all risks for Goods of that kind from the time the risk in the Goods passes to the Customer until the time that title to the Goods passes to the Customer. The Customer holds the proceeds of that insurance on trust for Daikin up to the amount it owes Daikin in respect of those Goods, and must keep such proceeds in a separate account until the liability to Daikin is discharged and must immediately pay that amount to Daikin.		16. NOISE AND VIBRATION	21.6	Where there is more than one The Customer then the liability of each shall be joint and several.
12. LIMITATION OF LIABILITY FOR GOODS		Any information provided by Daikin regarding noise and vibration in respect of the Goods is given for the assistance of the Customer and the Customer shall not rely upon such information or Daikin's skill or judgment in respect of such information.	21.7	The rights and remedies provided in the Agreement will not affect any other rights or remedies available to Daikin.
12.1	To the maximum extent permitted by law, all conditions and warranties expressed or implied by statute, common law, equity, trade, custom, usage or otherwise in respect of the Goods are expressly excluded.	17. TERMINATION	21.8	The Customer shall not assign this Agreement without Daikin's prior written consent.
12.2	For equipment forming part of the Goods, which equipment is not manufactured by Daikin, the original manufacturer's warranty will apply. Daikin's liability for such equipment shall not exceed the liability of the manufacturer.	17.1 Either party may immediately terminate this Agreement by written notice to the other if:		
12.3	In respect of Goods that are not ordinarily acquired for personal, domestic or household use or consumption, the liability of Daikin for a breach of any condition or warranty implied by law is limited at Daikin's option to the repair of the Goods or supply of replacement Goods.	17.1.1 the other party commits any breach of any of the provisions of this Agreement, where such breach has been the subject of a written notice detailing the breach and that party fails to rectify such breach to the satisfaction of the other party within 14 days of being required in writing to do so;		
12.4	Daikin's liability under the Agreement will be reduced by the amount of any contributory loss or damage to the extent caused by the Customer's act or omission.	17.1.2 an order is made or an effective resolution is passed for the winding up of the other party (other than for the purposes of a solvent reconstruction or amalgamation);		
12.5	The Customer acknowledges and agrees that, to the extent permitted by law, Daikin has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption or destruction of data or for any indirect, special or consequential loss or damage whatsoever.	17.1.3 a receiver or official manager of the other party's property or assets or any part thereof is appointed, or an official manager of the other party is appointed;		
12.6	Daikin's total liability under any contract and the Agreement shall not exceed the total dollar amount of the Goods purchased by the Customer under each contract.	17.1.4 the other party, without the prior written consent of the terminating party, makes an assignment for the benefit of its creditors or any of them or enters into any arrangement or composition with its creditors or any of them or threatens to do so;		
12.7	The Customer indemnifies and shall keep indemnified Daikin against all losses, damages, liabilities, claims and expenses (including but not limited to reasonable legal costs and defense or settlement costs) whatsoever arising out of or referable to any breach by the Customer of this Agreement except to the extent that the loss or liability is due to a negligent or wrongful act or omission of Daikin, its agents, employees or subcontractors.	17.1.5 the other party ceases to carry on its business or stops or suspends payment of its debts or threatens to do so.		
13. WARRANTY		17.2 The obligations set out in clauses 6, 12, 18 and 19 survive any termination of this Agreement.		
13.1	Goods supplied under this Agreement are warranted by Daikin for the 18 months from the date of invoice or from when the equipment is available for delivery to site, or 12 months from date of equipment startup/commissioning against defects in design, materials and workmanship. The Goods or any part of them covered by warranty shall be repaired or replaced at the absolute discretion of Daikin.	17.3 Termination of this Agreement is without prejudice to the accrued rights of the parties as at the date of termination.		
13.2	The warranty shall not apply to Goods subjected from the date on which the Goods were received by the Customer to neglect, erosion, corrosion or damage by fire or flood. Under no circumstances shall Daikin be liable in any way to the Customer and Daikin shall not be responsible for repairing or replacing the Goods, or any part of them, under warranty.	18. CONFIDENTIALITY		
13.3	The warranty shall not apply to damage to the Goods arising from work carried out on the Goods or any part of them other than by a person or party authorized in writing by Daikin, or arising from the Customer's failure to notify Daikin of any defects within a reasonable timeframe after the defects are detected by the Customer.	Each party shall keep confidential all information and materials, in any form, not lawfully in the public domain, in the possession of or under the control of the other party, or to which the Customer gains access at any time including the period preceding this Agreement.		
13.4	Resetting of equipment faults without first notifying, receiving advice or an inspection from Daikin may void the equipment warranty.	19. INTELLECTUAL PROPERTY		
13.5	Unless service under warranty is specifically included in the Agreement, the cost of labour for fitting of replacement parts will be at the expense of the Customer.	Property, right and title in all intellectual property in relation to the Goods shall at all times remain with Daikin.		
13.6	For the avoidance of doubt, if the Customer engages someone other than Daikin to carry out any work on the Goods during the warranty period, all warranties provided by Daikin shall be null and void.	20. DISPUTE RESOLUTION		
14. EXPORT/RESALE		20.1 Daikin and the Customer shall comply with this clause prior to the institution of any legal proceedings.		
14.1	The Goods supplied are intended for use only in Australia, unless Daikin otherwise agrees. If The Customer exports the Goods, it is	20.2 Where a party to this Agreement claims that a dispute, controversy or claim has arisen between the parties in relation to the Agreement, the party making the claim shall provide written notice to the other party specifying the nature of the dispute.		
		20.3 Within fourteen (14) days of receipt of the written notice by the other party, or such longer period as the parties may agree in writing, the parties shall in good faith and acting reasonably use their best efforts to resolve the dispute, controversy or claim.		
		20.4 In the event that the dispute, controversy or claim has not been resolved in accordance with subclause 20.3, either party may then commence legal proceedings in respect of the subject matter of the dispute.		
14. EXPORT/RESALE		21. MISCELLANEOUS		
14.1	The Goods supplied are intended for use only in Australia, unless Daikin otherwise agrees. If The Customer exports the Goods, it is	21.1 The fact that Daikin fails to do, or delays in doing, something it is entitled to do under the Agreement, does not amount to a waiver of its right to do it. Daikin must agree in writing to any waiver.		