



## CONDITIONS OF SALE - APPLIED

### 1 GENERAL

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Unless the context otherwise requires:

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

Agreement means the agreement for supply of Goods and/or Services between Daikin Australia and the Customer consisting of these "Conditions of Sale", the Order for the Goods and Services accepted by Daikin Australia, the Confirmation of Order and any variation or additional term agreed in accordance with these Conditions of Sale.

Confirmation of Order means a written document issued by Daikin Australia which sets out a description of the Goods and/or Services, the charges and any other necessary terms, and which may include details of the Customer's offer to purchase the Goods and/or Services.

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

Daikin Australia means Daikin Australia Pty Limited, its agents and assigns.

Goods means the goods and/or services agreed to be supplied by Daikin Australia 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 Australia to supply the Goods and Services in accordance with any Quote issued by Daikin Australia.

Quote means a quote provided by Daikin Australia to the Customer for purchase of Goods or Services.

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

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

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

### 2 QUOTE

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- 2.1 Any brochure, catalogue, price list, internet page, Quote or other communication published or forwarded by Daikin Australia to the Customer, whether in writing or not, shall only constitute an invitation by Daikin Australia to the Customer to do business that Daikin Australia may withdraw or alter at any time.
- 2.2 Any Quotes given by Daikin Australia to the Customer will remain valid for a period of 30 days from the date when the Quote was given or such other period as nominated by Daikin Australia in the Quote. Thereafter the Quote will lapse.
- 2.3 The Customer acknowledges that any Quote given by Daikin Australia is based on information given to Daikin Australia by the Customer and Daikin Australia 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 Quote.
- 2.4 The price for which Daikin Australia provides the Goods and Services shall be fixed from the date of the acceptance of the Order.

### 3 CHANGE OF LAW & INCREASED COSTS

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- 3.1 If, as a result of a present or future law, regulation, levy or tax, or the interpretation or implementation of any of them, the cost to Daikin Australia or any related entity of it (as defined by the Corporations Act 2001) (Related Entity) of supplying the Goods and/or Services to the Customer increases, then the Customer must on demand pay to Daikin Australia such amounts as Daikin Australia determines are reasonably necessary to compensate it (or any Related Entity of it) for the increased cost of supply.

### 4 ORDERS

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- 4.1 In order to purchase the Goods and Services, the Customer must place with Daikin Australia 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 Australia. The Order may be accepted or rejected by Daikin Australia at Daikin Australia's sole discretion.

4.2 A contract shall be formed by and upon Daikin Australia accepting an Order by Daikin Australia issuing a Confirmation of Order pursuant to clause 4.1 and each contract shall be governed by the Agreement.

4.3 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.

4.4 Any conditions or terms of purchase submitted by the Customer deviating from or inconsistent with the Agreement will not bind Daikin Australia, notwithstanding any statement by the Customer that its terms and conditions prevail over the Agreement.

## **5 SUPPLY OF INFORMATION**

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5.1 As soon as practicable after entry into this Agreement, the Customer shall supply Daikin Australia with all information required by Daikin Australia to manufacture the Goods and to provide the Services.

5.2 The Customer warrants the accuracy of all the information it provides to Daikin Australia and acknowledges that Daikin Australia 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 Australia, the Customer agrees to reimburse Daikin Australia for these costs.

5.3 Daikin Australia may make reasonable modifications of any kind to the Goods prior to its delivery. If that occurs, Daikin Australia will notify the Customer prior to delivery of any modifications. If such modifications are unacceptable to the Customer, the Customer may cancel the Purchase by providing written notice.

## **6 TESTING**

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6.1 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 Australia. Any tests requested by the Customer must be agreed to by Daikin Australia and be carried out at a time mutually convenient to both parties.

6.2 If Daikin Australia is commissioning the Goods, Daikin Australia will certify to the Customer when the commissioning is completed successfully. When certified, the Customer will be taken to have accepted the Goods.

6.3 If a party other than Daikin Australia is commissioning the Goods, the Customer will be taken to have accepted the Goods once that party has certified that the commissioning has been completed successfully.

6.4 For the avoidance of doubt nothing in this clause alters the obligation of the Customer to make payment to Daikin Australia in accordance with the Agreement.

## **7 CREDIT FACILITIES AND PAYMENT**

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7.1 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 Australia in writing.

7.2 The provision of a credit account to the Customer may be withdrawn by Daikin Australia at any time.

7.3 Where an Account Application Form:

7.3.1 has not been applied for or approved by Daikin Australia, payment for Goods must be made as at the date that Daikin Australia accepts the Order; or

7.3.2 has been approved by Daikin Australia, payment for Goods supplied under the credit facilities must be paid to and received by Daikin Australia within 30 days from the end of the month in which all the Goods are invoiced 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.

7.4 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, the Customer shall be liable to pay to Daikin Australia without demand interest thereon at the rate of 3% above the indicator lending rate from time to time and charged by Daikin Australia's bankers as nominated by Daikin Australia at the relevant time. Interest payable hereunder shall be compounded monthly and calculated from the due date for payment to the date upon which payment is actually made.

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

## **8 CANCELLATION OF ORDERS**

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Following Daikin Australia issuing a Confirmation of Order, the Customer may not alter or cancel an Order without Daikin Australia's prior written consent. If Daikin Australia agrees to alter or cancel the Order, the Customer will indemnify Daikin Australia against any reasonable loss, damage and expense incurred by Daikin Australia 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 Australia in the execution or part execution of the Goods and including compensation payable to any of Daikin Australia's suppliers and loss of profit.

## **9 RETURN OF GOODS**

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Goods may not be returned except with written consent from Daikin Australia. When Goods are so returned all monies

payable to Daikin Australia will remain due and payable, subject to discount, reimbursement, restocking fees or other conditions as stated in the written consent.

## **10 DELIVERY AND STORAGE**

10.1 Upon receipt of the Customer's Order and Daikin Australia's written acceptance of that Order, Daikin Australia 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.

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

10.3 Daikin Australia is deemed to have delivered the Goods:

- (a) unless (b) applies, when the Goods are actually delivered to the project address kerbside nominated by the Customer; or,
- (b) 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 affected.

Daikin Australia Quotes include delivery and insurance to project kerbside and excludes any lifting or crainage costs at project site or nominated delivery address.

10.4 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.

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

10.6 The Customer shall indemnify and keep indemnified Daikin Australia against any loss or damage which occurs during removal of the Goods from the truck and installation, except to the extent caused by Daikin Australia's negligence or wrongful act or omission. Where the Works provide for the purchase of Goods only, the Works shall be deemed completed upon delivery in accordance with the Agreement.

10.7 If Daikin Australia has agreed to make delivery and:

- (a) Daikin Australia is unable to effect delivery for reasons outside its control; or
- (b) the Customer is unwilling or unable to accept delivery,

Daikin Australia may store the Goods and charge the Customer for all reasonable costs and expenses associated with such storage and delayed delivery, including, if applicable, any additional financing costs incurred by Daikin Australia by reason of a fixed price having been agreed for the Goods with the Customer or otherwise.

10.8 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 Australia to withhold or delay delivery of any remaining Goods ordered.

10.9 For delivery of the Goods, the Customer shall provide Daikin Australia 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.

10.10 The Customer shall provide Daikin Australia 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 Australia to a corresponding extension of time for Daikin Australia to complete the Works.

10.11 Risk in the Goods passes to the Customer at the time delivery is determined to occur under the Agreement.

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

## **11 SECURITY INTEREST**

11.1 No legal or equitable title to the Goods shall pass to the Customer until payment in full has been made by the Customer not only of all charges for all Goods the subject of the Agreement (unless waived in writing by Daikin Australia) but also until payment has been made of all other sums due to Daikin Australia by the Customer on any account whatsoever. Until all such sums due to Daikin Australia by the Customer have been paid in full, Daikin Australia has a security interest in all Goods and their proceeds.

11.2 If the Goods are attached, fixed or incorporated into any property of the Customer, title in the Goods will remain with Daikin Australia until the Customer has made payment for all Goods, and where the Goods are mixed with other property so as to be a part of or a constituent of any new goods, title to those new goods shall be deemed to be assigned to Daikin Australia as the security for the full satisfaction by the Customer of the full amount owing between Daikin Australia and the Customer.

11.3 Subject to clause 11.7 until the legal and equitable title to the Goods pass to the Customer, the Customer:

- (a) shall hold the Goods as bailee of Daikin Australia returnable at will and without prior demand by Daikin Australia;
- (b) shall, upon demand by Daikin Australia, immediately deliver up the Goods to Daikin Australia; and
- (c) hereby authorizes Daikin Australia to enter upon the premises upon which the Goods are

stored for the purpose of taking possession thereof.

- 11.4 Daikin Australia shall not be liable for, and the Customer expressly releases Daikin Australia from any liability for, any damage, costs or losses arising from or in connection with the recovery of possession of the Goods by Daikin Australia.
- 11.5 The Customer agrees that ss. 95, 96, 117, 118, 120, 121, 125, 130, 132(3)(d), 132(4), 135, 142 and 143 (Relevant Sections) of the Personal Property Securities Act 2009 (PPSA) do not apply to the enforcement by Daikin Australia of any security interest created or provided for by this Contract to which the PPSA applies. The Customer waives any right it may otherwise have had under the Relevant Sections of the PPSA on such enforcement.
- 11.6 The Customer acknowledges receipt of a copy of these Terms and Conditions of Sale and waives any right it may have to receive from Daikin Australia a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to this Agreement.
- 11.7 Until title of the Goods passes to the Customer, the Customer will not purport to assign any right or interest therein to any other person other than by sale of the Goods in the usual course of business (upon which title will pass to the purchaser). The proceeds of any such sales will be the property of Daikin Australia and must be held by the Customer on a fiduciary basis in a separate bank account for the benefit of Daikin Australia, and will be payable to Daikin Australia immediately without demand.
- 11.8 The Customer shall promptly do whatever Daikin Australia reasonably requests of the Customer to:
- 11.8.1 ensure Daikin Australia's rights in relation to the Goods are enforceable, perfected and effective; and
- 11.8.2 enable Daikin Australia to apply for any registration, or give any notification, in connection with this Agreement to preserve Daikin Australia's rights in relation to the Goods.
- 11.9 The Customer must pay all of Daikin Australia's costs and expenses in relation to compliance with any demand under the PPSA, or in relation to any application for, or the obtaining of, any Court order to maintain any registration in respect of any security interest created under this Agreement and the serving of such Court order on the Customer or the Registrar of Personal Property Securities.
- 11.10 The Customer must supply all details requested by Daikin Australia to enable Daikin Australia to register a financing statement in respect of the Goods, including providing notice to Daikin Australia if those details change.

## **12 INSURANCE**

The Customer must keep the Goods insured against all  
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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 Australia up to the amount it owes Daikin Australia in respect of those Goods, and must keep such proceeds in a separate account until the liability to Daikin Australia is discharged and must immediately pay that amount to Daikin Australia.

## **13 LIMITATION OF LIABILITY FOR GOODS**

- 13.1 The Customer may be entitled to certain non-excludable rights, protections and remedies under law including under the *Australian Consumer Law* contained in the *Competition and Consumer Act 2010* (Cth). Nothing in the Agreement including the limitations and exclusions of Daikin Australia liability in this clause 13 and the limited warranty in clause 14 is intended to restrict the effect of any rights, protections or remedies imposed by law which cannot be excluded, restricted or modified. The non-excludable rights, protections and remedies under law available to the Customer may vary depending on whether the Customer is purchasing Goods for resupply or Goods or Services not ordinarily acquired for personal, domestic or household use or consumption.
- 13.2 To the maximum extent permitted by law, all conditions and warranties implied by statute, common law, equity, trade, custom, usage or otherwise in respect of the Goods or Services are expressly excluded.
- 13.3 For equipment forming part of the Goods, which equipment is not manufactured by Daikin Australia, the original manufacturer's warranty, if any, will apply. Daikin Australia may, at its sole option, transfer any such manufacturer's warranty to the Customer. To the full extent permitted by law, Daikin Australia's liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise arising for such equipment shall not exceed the liability of the manufacturer to Daikin Australia.
- 13.4 To the extent permitted by law, Daikin Australia limits its liability for failure to comply with statutory guarantees applying under the Australian Consumer Law to at Daikin Australia's option:
- (a) in the case of Goods:
- (i) the replacement of the Goods or the supply of equivalent Goods;
- (ii) the repair of the Equipment;
- (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (iv) the payment of the cost of having the Goods repaired; and
- (b) in the case of Services:
- (i) the supplying of the services again; or

- (ii) the payment of the cost of having the services supplied again.

13.5 Daikin Australia'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.

13.6 The Customer acknowledges and agrees that, to the extent permitted by law, Daikin Australia has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise arising under or in connection with the Agreement 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.

13.7 To the extent permitted by law, Daikin Australia's liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise, in aggregate for all claims arising under or in connection with the Agreement, shall not exceed the total dollar amount of the Goods purchased by the Customer under each contract.

13.8 The Customer indemnifies and shall keep indemnified Daikin Australia against all losses, damages, liabilities, claims and expenses (including but not limited to reasonable legal costs and defence 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 Australia, its agents, employees or subcontractors.

#### **14 WARRANTY**

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14.1 Goods supplied under this Agreement are warranted by Daikin Australia against defects in design, materials and workmanship for the 18 months from the earlier of the date of invoice or from when the Goods are available for delivery to site, or 12 months from date of Goods startup/commissioning. The Goods or any part of them covered by warranty shall be repaired or replaced at the absolute discretion of Daikin Australia.

14.2 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 Australia be liable in any way to the Customer and Daikin Australia shall not be responsible for repairing or replacing such Goods, or any part of them, under warranty.

14.3 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 authorised in writing by Daikin Australia, or arising from the Customer's failure to notify Daikin Australia of any defects within a reasonable timeframe after the defects are detected by the Customer.

14.4 Resetting of Goods faults without first notifying, receiving advice or an inspection from Daikin Australia may void the Goods warranty.

14.5 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.

14.6 For the avoidance of doubt, if the Customer engages someone other than Daikin Australia to carry out any work on the Goods during the warranty period, all warranties provided by Daikin Australia shall be null and void.

#### **15 EXPORT/RESALE**

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15.1 The Goods supplied are intended for use only in Australia, unless Daikin Australia otherwise agrees. If the Customer exports the Goods, it is the Customer's responsibility to ensure that the Goods and the use to which they are put comply with the laws of the destination.

15.2 Unless otherwise stated in the Quote, the warranty and Services provided for the Goods are only applicable for project sites in Australia.

15.3 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.

#### **16 NOISE AND VIBRATION**

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Any information provided by Daikin Australia 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 Australia's skill or judgment in respect of such information.

#### **17 TERMINATION**

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17.1 Either party may immediately terminate this Agreement by written notice to the other if:

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 30 days of being required in writing to do so;

17.1.2 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;

17.1.3 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;

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; or

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;

17.1.6 any event occurs outside the reasonable control of Daikin Australia which in Daikin Australia's estimate makes it impracticable or impossible for Daikin Australia to fulfil its obligations under the Agreement.

17.2 The obligations set out in clauses 6, 7, 12, 13, 18, 19 and 20 and any provisions which by their nature are intended to survive, will survive any termination or expiration of this Agreement.

17.3 Termination of this Agreement is without prejudice to the accrued rights of the parties as at the date of termination.

## **18 CONFIDENTIALITY**

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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.

## **19 INTELLECTUAL PROPERTY**

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Property, right and title in all intellectual property in relation to the Goods shall at all times remain with Daikin Australia.

## **20 DISPUTE RESOLUTION**

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20.1 Daikin Australia and the Customer shall comply with this clause prior to the institution of any legal proceedings.

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.

## **21 FORCE MAJEURE**

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21.1 Subject to clause 21.2, neither party will be liable for any loss or damage suffered by the other party due to any delay or any breach or default under the Agreement in

circumstances to the extent that such delay, breach or default results from causes beyond the party's reasonable control including but not limited to any breach or default under the Agreement by the other party, any change in laws, regulations, orders, acts, instructions or priority requests of governments, acts of God, fires, floods, weather, strikes, lockouts, factory shutdown or alterations, embargoes, wars, riots, delay or shortage in transportation or inability to obtain labour, manufacturing facilities, electricity, oil or other materials from Daikin Australia's or the manufacturer's usual sources.

21.2 This clause 21 does not apply to any obligation of the Customer to pay any amount under the Agreement.

21.3 Any delay resulting from such cause shall immediately extend the date for the performance of any impacted obligation under the Agreement by the period of delay.

21.4 If performance under the Agreement is delayed for more than three consecutive months as a result of circumstances described in clause 21.1 above, either party may terminate the Agreement.

## **22 MISCELLANEOUS**

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22.1 The fact that Daikin Australia 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 Australia must agree in writing to any waiver.

22.2 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.

22.3 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 Quote, 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.

22.4 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.

22.5 Where there is more than one Customer then the liability of each shall be joint and several.

22.6 The rights and remedies provided in the Agreement will not affect and are without prejudice to any other rights or remedies available to Daikin Australia.

22.7 The Customer shall not assign this Agreement without Daikin Australia's prior written consent.