

Rapid Refrig & HVAC Services Pty Ltd - Terms & Conditions of Trade

1. Definitions

- 1.1 "RRHS" means Rapid Refrig & HVAC Services Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Rapid Refrig & HVAC Services.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by RRHS to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between RRHS and the Client in accordance with clause 2 below.
- 1.5 "Site" means the location where the Goods are to be installed and shall be interchangeable with "Premises".

2. Price and Payment

- 2.1 The Price shall be as indicated on invoices provided by RRHS to the Client in respect of the Goods supplied.
- 2.2 RRHS reserves the right to change the Price in the event of a variation to the quotation. In the event of any variation from the plan of scheduled works or specifications (including but not limited to any variation due to unforeseen circumstances for example, safety issues or as a result of increases to RRHS in the cost of materials and / labour) under these circumstances RRHS reserves the right to cease all Services until such time as RRHS and the Client agree to changes of the plans and / or specifications as outlined in the quote to incorporate such variances. The variances once approved shall be detailed in writing and charged for on the basis of RRHS's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full as per clause 2.3.
- 2.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation, or any other order forms. If no time is stated then payment will be due seven (7) days following the date of the invoice.
- 2.4 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to RRHS an amount equal to any GST RRHS must pay for any supply by RRHS under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

3. Acceptance

- 3.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally by these Terms and Conditions if the Client places an order for or accepts delivery of the Goods.
- 3.2 These Terms and Conditions may only be amended with RRHS's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and RRHS.
- 3.3 RRHS shall only be responsible for their performance to the party that contracts them to undertake the Services and shall not be responsible to any third party irrespective of their relationship to the Client.
- 3.4 The Client accepts when requesting or organising the Contractor to provide Services that the Client shall acknowledge their interest in the Goods as the lawful owner of the Goods or in the case of a third party that the Client has the written authority to act as an agent on behalf of the third party. If the third party is intended to be responsible for the payment (or any part thereof) of the Price, then in the event that the third party does not pay for the Services when due, the Client acknowledges that they shall be liable for the payment of the Price as if they had contracted the Services on their own behalf.

4. Electronic Transactions (Victoria) Act 2000

Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of the Act or any Regulations referred to in same.

5. Risk

- 5.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, RRHS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by RRHS is sufficient evidence of RRHS's rights to receive the insurance proceeds without the need for any person dealing with RRHS to make further enquiries.
- 5.3 RRHS shall be entitled to rely on the accuracy of any plans, specifications and other information supplied by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, RRHS accepts no responsibility for any loss, damages or costs whatsoever, resulting from same.
- 5.4 RRHS reserves the right to refuse to continue or to complete the Services in the event that RRHS believes the site to be unsafe to either RRHS's employees and / or contractors and / or the Client's property. In this event, the Client accepts RRHS's right to make the site safe before Services continue. The Client agrees to indemnify RRHS against all additional costs incurred in such an event, with all additional costs detailed separately at the time of invoicing in accordance with Clause 2.2. RRHS shall not be liable for any delays caused, loss, damages or costs resulting from an unsafe site.
- 5.5 Where the Client has provided instructions or specifications for RRHS to complete the Services (including but not limited to, any requested variation to the original design), then RRHS shall accept no liability whatsoever for the finished Services being deemed as unsatisfactory to the Client.
- 5.6 The Client warrants that any structure, where applicable, to which the Goods are to be affixed are able to withstand the installation of the Goods and that any connections (including but not limited to, meter boxes, main switches, pipes, wiring etc.) are of suitable capacity to handle the Goods being installed. If for any reason (including but not limited to the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing, that RRHS or employees and / or

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contractors of RRHS reasonably form the opinion that the Client's premises are not safe for the installation of the Goods to proceed, then RRHS shall be entitled to delay the installation of the Goods until RRHS is satisfied that it is safe for the installation to proceed.

- 5.7 The Client agrees that the site will comply with any occupational health and safety laws and any other relevant safety standards of legislation.
- 5.8 RRHS reserves the right not to clean the site if animal faeces or other contaminants could cause a health issue for employees or contractors of RRHS.

6. Underground Locations

- 6.1 Prior to RRHS commencing any work the Client must advise RRHS of the precise location of all underground services on the on the site and clearly marked same.
- 6.2 The underground services the Client must identify include, but are not limited to, electrical, gas, sewer services / connections / sludge mains, pumping services, water and / or oil pumping mains, irrigation pipes, telephone and / or fibre optic cables, and any other services that may be on site.
- 6.3 While RRHS will take all care to avoid damage to any underground services, the Client agrees to indemnify RRHS in respect of any or all liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause.

7. Title to Goods (including any incidental items supplied as part of any Services)

- 7.1 RRHS and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid RRHS all amounts owing to RRHS; and
 - (b) the Client has met all of its other obligations to RRHS.
- 7.2 Receipt by RRHS 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.
- 7.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 7.1 that the Client is only a bailee of the Goods and must return the Goods to RRHS on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for RRHS and must pay to RRHS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for RRHS and must pay or deliver the proceeds to RRHS on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of RRHS and must sell, dispose of or return the resulting product to RRHS as it so directs.
 - (e) the Client irrevocably authorises RRHS to enter any premises where RRHS believes the Goods are kept and recover possession of the Goods.
 - (f) RRHS may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of RRHS.
 - (h) RRHS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

8. Personal Property Securities Act 2009 ("PPSA")

- 8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by RRHS to the Client.
- 8.3 The Client undertakes to:
- (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 RRHS may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, RRHS 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;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of RRHS;
 - (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 RRHS;
 - (e) immediately advise RRHS of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.4 RRHS and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

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- 8.7 Unless otherwise agreed to in writing by RRHS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Client must unconditionally ratify any actions taken by RRHS under clauses 8.3 to 8.5.
- 8.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

9. Security and Charge

- 9.1 In consideration of RRHS agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2 The Client indemnifies RRHS from and against all RRHS's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising RRHS's rights under this clause.
- 9.3 The Client irrevocably appoints RRHS and each director of RRHS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Client's behalf.

10. Default and Consequences of Default

- 10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of ten percent (10%) per annum (and at RRHS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 10.2 If the Client owes RRHS any money the Client shall indemnify RRHS from and against all costs and disbursements incurred by RRHS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, RRHS's collection agency costs, and bank dishonour fees).

11. Privacy Act 1988

- 11.1 The Client agrees for RRHS to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by RRHS.
- 11.2 The Client agrees that RRHS may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.
- 11.3 The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 11.4 The Client consents to RRHS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 11.5 The Client agrees that personal credit information provided may be used and retained by RRHS for the following purposes (and for other purposes as shall be agreed between the Client and RRHS or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by RRHS, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 11.6 RRHS may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 11.7 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that RRHS is a current credit provider to the Client;
 - (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;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of RRHS, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by RRHS has been paid or otherwise discharged.

12. Delivery

- 12.1 The times quoted for delivery are estimates only and RRHS accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of RRHS.
- 12.2 Risk in the Goods passes on delivery to the Customer.

13. Access

- 13.1 The Client shall ensure that RRHS has clear and free access to the work site at all times to enable them to undertake the works. RRHS shall not be liable for any loss or damage to the site, including without limitation, unless due to the negligence of RRHS.

14. Intellectual Property

- 14.1 Where RRHS has designed, drawn or quoted Goods for the Client, then the copyright for any of these documents shall remain the property of RRHS.
- 14.2 The Client agrees that RRHS may use (at no cost) for the purpose of marketing or tender purposes, any documents, designs, drawings, photographs or Goods which the Contractor has created for the Client.

15. Warranty, Returns, or Refunds

- 15.1 Service under warranty shall only be available between the hours of 7.30am to 4.00pm Monday to Friday, and excludes public holidays, and warranty does not include routine maintenance service including filter cleaning, rectification of faults arising from power failure, misuse of equipment, lack of routine maintenance or operator error.
Warranty for the purpose of this clause is either:
 - (a) Installation warranty; a guarantee of workmanship and associated ductwork and materials on new installations for a period of 12 (twelve) months whereby RRHS will repair the product in the event of any defect,
 - (b) Service warranty; a guarantee of workmanship for service repair work for a period of 3 (three) months where the works will be performed again in the event of any defects associated with the initial service work.
- 15.2 All costs of freight and travelling expenses associated with making a claim under this warranty are to be paid by the Customer.
- 15.3 The Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement for a "major failure". The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a "major failure". Major failure is null and void if RRHS believes and can legally lay claim that the failure cause to be associated with incorrect or insufficient mandatory maintenance or incorrect operation.
- 15.4 The benefits to you given by RRHS warranty are in addition to other rights and remedies that you may have under law in relation to the products to which this warranty relates.
- 15.5 Warranty on new capital equipment and new parts are subject to the manufacturer's warranty. However, where permissible by law, the customer must pay for all work undertaken in carrying out a repair if the manufacturer's assessment determines the claim does not fall within the manufacturer's warranty terms.
- 15.6 The Customer must provide proof of purchase and payment of that purchase to make a claim under any warranty.
- 15.7 If the Customer wishes to make a claim under this warranty, it should:
 - (a) Phone: 1300 278 111
 - (b) Email: info@rrhs.com.au

16. Returns, Credit or Refunds

- 16.1 Returns, Credit or Refunds are not provided by RRHS under any circumstances.
- 16.2 Upon requesting our services, products, installations, or quotations the client is accepting the charges, services and products provided as described and the goods and invoice is final. Not as described is considered invalid as the client takes all responsibility on making the correct purchasing choice for their needs or requirements prior to the request or supply of goods and services.
- 16.3 Upon signing a RRHS service attendance form, maintenance form, new project quotation, quotation completion form, the client accepts all responsibility on the final product delivered by RRHS being fit for their purpose.
- 16.4 RRHS accepts no client enforced, or third parties claim to any outgoing payment. Any payments outgoing from RRHS require confirmation of a full RRHS purchase order, signed by RRHS management, failure to provide such documentation results in no financial or legal liability to RRHS in any format or circumstance.

17. Client's Responsibilities

- 17.1 The Client will provide access to the Premises the Goods are to be installed at the designated date and time. Failure to do so could result in further costs incurred by the Client if RRHS cannot complete the Service on the agreed date and time.
- 17.2 The Client agrees to remove any furniture, furnishings or personal good from the vicinity of the Services and agrees that RRHS shall not be liable for any damage caused to those items through the Client's failure to comply with this clause.
- 17.3 The Client shall provide RRHS with a suitable free power source and access to water and toilet facilities.
- 17.4 The Client shall obtain at their own expense, all licences and approvals that may be required for the services.

18. General

- 18.1 The failure by RRHS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect RRHS's right to subsequently enforce that provision. 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.

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- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Victoria in which RRHS has its principal place of business, and are subject to the jurisdiction of the courts in Victoria.
- 18.3 RRHS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by RRHS of these terms and conditions (alternatively RRHS's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 18.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by RRHS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 18.5 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

19. Preventative Maintenance Agreement, rates of charges and sundries

- 19.1 Maintenance services to be carried out between 8:00am and 4:30pm Monday to Friday.
- 19.2 Further service work and/or parts and equipment replacement are not covered under this agreement. These works will incur additional charges. A repair quotation for any such additional charges will be provided for suitable approval unless verbally instructed to proceed.
- 19.3 A preventative maintenance agreement does not include the costs of labour for diagnosing faults or any materials used in the replacing, making good, amending or renewing any broken, damaged, worn or defective equipment, or the supply of lubricants or refrigerant.
- 19.4 Rapid Refrig & HVAC Services P/L Service Technicians shall exercise all care and diligence whilst completing any works or servicing as to minimize inconvenience or disruption as much as possible and will report verbally and in writing of any urgent works required, malfunctions or hazards. Our management and technicians are not liable for misdiagnosis, or error in oversight in their actions or inspections.
- 19.5 Rapid Refrig & HVAC Services P/L shall not be liable under a preventative maintenance agreement for any loss or damage suffered by the owner, tenant or any 3rd party by reason of defective or improper working of the equipment or the breakdown of any part thereof or otherwise.
- 19.6 Rapid Refrig & HVAC Services does not accept any responsibility for equipment if it is repaired, altered, inspected, interfered or adjusted in any way by persons other than the company's representatives.
- 19.7 A preventative maintenance agreement shall remain in force until such time as it is terminated by either party with three by means of three (3) months' notice in writing. In the event that the client does not correct notice, a charge equal to 1 visit will be payable.
- 19.8 Additional works outside of preventative maintenance will be carried out will be at our normal hourly rate detailed in your agreement. Service hourly is calculated from our arrival on site unit our departure from site, in one (1) hour minimum blocks unless otherwise agreed.
- 19.9 All service repair or inspection to quote works will be attributed a service attendance fee at a value detailed in your agreement. A service attendance fee is applicable to all service repair tasks irrespective of any circumstance.
- 19.10 After hours callouts will incur a minimum four (4) hour callout charge, and will be charged at double time, based on the base hourly rate in your agreement. After hours call out hourly charges commence "doorstep to doorstep" and in this regard only are four (4) hours minimum.
- 19.11 Inspection and condition reports will be submitted to the client within the Preventative Maintenance Reports submitted on the completion of the scheduled preventative maintenance within specific terms in each agreement.
- 19.12 Replacement of filters is not covered in typical preventative maintenance agreements, unless otherwise specified. A water tap that is within reasonable distance of the equipment (within the discretion of the technician) is to be made available for washing of filters if/when applicable. If water restrictions are in place, or a tap is not available, Rapid Refrig & HVAC Services will provide quote for replacement with disposable filters and have no alternate option but to leave existing filters as found.
- 19.13 Whilst Rapid Refrig & HVAC Services Pty Ltd will use all best endeavours to complete the Scheduled Maintenances as close to the due date as possible, there may be instances out-side of our control that they are not carried out on the due date. Maintenances are scheduled in monthly blocks, and in the event that maintenance is completed late, it will not affect the schedule of the following maintenance.
- 19.14 At the conclusion of a preventative maintenance agreement/contract, unless otherwise instructed, it will renew itself automatically for a period of twelve (12) months, and rates may be adjusted by C.P.I. without prior notice.