

# TERMS AND CONDITIONS OF PURCHASE ORDER

but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

## 1. Interpretation

In these terms and conditions of purchase order (the **Terms**):

**Climatch** means any one of the individual companies that are part of the Climatch Group as detailed below, (a) to (j), and **Supplier** means the seller/vendor who accepts Climatch's order for the purchase/hire of goods/service.

- (a) Climatch ACT Pty Ltd ABN 16 075 228 161
- (b) Climatch NSW Pty Ltd ABN 25 137 661 824
- (c) Climatch ACT Special Projects Pty Ltd ABN 58 616 328 600
- (d) Climatch NSW Special Projects Pty Ltd ABN 68 619 068 656
- (e) Climatch Digital Infrastructure Pty Ltd ABN 69 632 553 381
- (f) Climatch VIC Pty Ltd & O.P. Industries Pty.Ltd. (Joint Venture) ABN 69 297 374 689
- (g) Climatch Refrigeration Pty Ltd ABN 25 658 118 873 Trading as Tri Tech Refrigeration Australia
- (h) Citiwide Prefab Pty Ltd ABN 63 629 495 656
- (i) Sedatech Pty Ltd ABN 67 078 982 448
- (j) Sedatech (NZ) Holdings Limited Partnership NZBN 942 904 650 0342
- (k) Seda Services ACT Pty Ltd ABN 72 168 101 371
- (l) Seda Services QLD Pty Ltd ABN 15 607 928 361 Trading As Sedatech Pty Ltd
- (m) Seda Services Pty Ltd ABN 42 081 283 454
- (n) Tribal Warrior Services Pty Ltd ABN 92 648 078 835
- (o) Equilibrium Air Conditioning Pty Ltd & Climatch NSW Pty Ltd (Joint Venture) ABN 54 112 126 768

**Goods and Services** means any goods and/or services the subject of a Purchase Order.

**Purchase Order** means any purchase order (or amendment or change or supplement to a purchase order) issued by Climatch to the Supplier in relation to the supply of any goods or services by the Supplier to Climatch.

## 2. Basis of agreement

- 2.1 Subject to clauses 2.2 and 2.3 below, all Purchase Orders are governed by these Terms, and by accepting and/or performing any Purchase Order the Supplier agrees to these Terms. Any terms and/or conditions relating to the Purchase Order, or changes to these Terms, stipulated by the Supplier in any document or correspondence are expressly excluded (and these Terms prevail) unless they are documented in writing and physically signed by both the Supplier and Climatch.
- 2.2 If the Supplier and Climatch have entered into a written signed document expressed to apply to a Purchase Order, then the terms of that document prevail over these Terms in relation to that Purchase Order to the extent of any inconsistency.
- 2.3 Climatch may, by written notice to Supplier, vary or amend these Terms or Purchase Orders in any manner it considers reasonably necessary to bring these Terms or that Purchase Order into alignment with the obligations imposed on Climatch under any Head Contract relating to the Goods and Services.
- 2.4 The Supplier may not increase any quoted price after the date of a Purchase Order.
- 2.5 Any requests for an increase to a Purchase Order value (and or variation) must be submitted prior to the supply of the goods or service and be accepted by Climatch in writing.

## 3. Prices & Payment

- 3.1 Other than to the extent expressly set out as separate component(s) in a Purchase Order, pricing quoted in a Purchase Order is inclusive of GST, other indirect taxes and all other applicable taxes, duties, imports, insurance costs, fees or costs imposed by governmental authorities, transportation and delivery charges, in each case relating to the Purchase Order.
- 3.2 Payment for Goods and Services is subject to (a) the Goods and Services being fully functional and fit for purpose; (b) the Goods and Services being delivered on the relevant delivery date (or such later date as Climatch advises in writing, or earlier date if agreed by both parties); (c) (if requested by Climatch) the Supplier producing a delivery receipt for the Goods and Services signed by an authorized representative of Climatch (such signature is not an acceptance of the quality or quantity of the Goods and Services supplied) and (d) the Supplier having sent Climatch a valid invoice for such Goods and Services to Climatch's accounts payable email address.
- 3.3 For an invoice to be valid it must be sent to Climatch's accounts payable email address as detailed on the Purchase Order, quote the relevant Purchase Order number, and set out payment amounts and components (including GST, taxes and other costs as referred to in clause 3.1 above) consistent with these Terms and the relevant Purchase Order.
- 3.4 Climatch's invoice processing close-off date is 5pm on the 20th of each month (or, if that is not a business day, the next business day). Invoices received prior to end of month but after the close-off date for that month will be processed in the following month.
- 3.5 Payment for Goods and Services which have been validly invoiced shall be made on or before forty-five (45) days after the last day of the month in which the invoice was processed.
- 3.6 The Supplier is not entitled to interest on unpaid monies, or for any other costs associated with recovery from Climatch for unpaid monies.
- 3.7 If partial delivery of the Goods and Services ordered are made by the Supplier, Climatch is not required to pay for any of the Goods and Services until all Goods and Services are received, unless otherwise agreed in writing by Climatch.
- 3.8 Climatch will not pay the Supplier for any additional Goods, Services, alterations or variations to the Purchase Order, unless those additional Goods, Services or alterations were agreed in writing by Climatch.
- 3.9 The Supplier must provide by any specified date, all drawings, operating and maintenance manuals, technical data with and as part of the Goods and Services so supplied and Climatch may withhold all or some of the payments until the Supplier has complied with this clause.
- 3.10 Climatch may set-off any sums due to Climatch by the Supplier against any amount owed by Climatch to the Supplier.

## 4. Delivery

- 4.1 Supplier shall be responsible for arranging delivery and insurance of the goods. Climatch shall not be liable to Supplier in the event of any failure to arrange insurance.
- 4.2 Supplier indemnifies Climatch on demand for any loss, cost, liability or damage suffered by Climatch (including indirect or consequential losses) due to the Supplier not complying with agreed timeframes in delivering or supplying Goods and Services or otherwise performing any of its contractual obligations due to any cause or circumstance of any kind whatsoever (including without limitation, loss of turnover, loss of profits, loss of business or goodwill, or any loss, cost, liability or damage incurred by Climatch under or in relation to any head contract or sub-contract relating to the Goods and Services (including, without limitation, the obligation under such contract to payment liquidated damages). In addition to such indemnified amounts, Climatch may in its discretion impose a delay charge equal to a maximum of eighteen (18%) per annum of order value for the duration of time in excess of that originally agreed for delivery/supply.
- 4.3 The Supplier agrees to deliver the Goods and Services to Climatch to the address specified by Climatch on its Purchase Order, or as otherwise directed by Climatch in writing from time to time.
- 4.4 Goods and Services must be delivered in accordance with the stated date of delivery.
- 4.5 Climatch reserves the right to alter the date of delivery or suspend the delivery of the Goods and Services, by a period of up to 6 months, at any time before the date of delivery by way of notice to the Supplier.
- 4.6 Goods and Services must be contained and packaged to ensure their safety during transport and delivery, and for storage of the Goods and Services.
- 4.7 Climatch may refuse to accept delivery of Goods and Services that do not comply with a Purchase Order or the Terms. Climatch accepts no liability for any Goods which may be returned at Climatch's discretion, at the Supplier's risk and cost.
- 4.8 All goods delivered must be tagged and labeled for ease of identification upon delivery.
- 4.9 Hoisting and off-loading is the responsibility of the Supplier whenever the Supplier is required under the scope of this Purchase Order to install or erect plant, materials or equipment supplied by the Supplier.

## 5. Cancellation

- 5.1 Climatch may return goods supplied for credit at any time, provided the goods are returned in their original condition. Supplier agrees to reimburse Climatch for any cost incurred in sorting, inspecting and packing goods for return.
- 5.2 Climatch reserves the right to cancel, in whole or in part, any contract for the supply of goods or services before delivery has been made without incurring any cancellation costs or any other charge relating to cancellation of order.

## 6. Insurance

- 6.1 Before providing any Goods and Services, the Supplier must:
  - a) have appropriate current and adequate insurance cover with regards to:
    - (i) Workcover: Approved Workers Compensation Insurance
    - (ii) Public and Product Liability;
    - (iii) Transport, theft, loss and damage;
    - (iv) Legionella in the case of water treatment suppliers; and
    - (v) Professional indemnity and Contractor's Risk, if applicable.
- 6.2 The Supplier will be liable for any insurance premium excess payments caused by the Supplier and claimed by Climatch against its insurance policy.

## 7. Property and Risk

- 7.1 Property in the Goods will pass to Climatch on delivery
- 7.2 The risk in the Goods and Services and all insurance responsibility for theft, damage or otherwise remains with the Supplier until the time of the Goods and Services have been delivered to Climatch's specifications, have been accepted by Climatch and are incorporated into the construction works.

## 8. Intellectual Property

- 8.1 The intellectual property in all materials provided by Climatch to the Supplier being, but not limited to, drawings, specifications, designs, manuals, tenders remains with Climatch, and the Supplier must promptly return all such material to Climatch if requested by Climatch. The Supplier warrants that it owns or is licensed to sell any Goods or provide any Services that are the subject of any patent, trade mark, design, copyright or any other form of intellectual or industrial property. The Supplier indemnifies Climatch against any and all liability, loss, damages and expenses arising out of any claim in respect of infringement or alleged infringement, of any patent, trade mark or design, copyright or any other form of intellectual or industrial property whether in Australia or overseas, relating to the Goods and Services.

## 9. Liability

- 9.1 The Supplier is liable for any direct, indirect or consequential losses or expenses suffered by Climatch or any third party arising out of these Terms, a Purchase Order or the use of the Goods and Services howsoever caused, including,

## 10. Conformity of Goods and Services

- 10.1 The Supplier must deliver Goods and Services that are of the quantity, quality and description detailed in a Purchase Order.
- 10.2 Goods and Services will not conform with a Purchase Order unless they:
  - a) are fit for the purposes for which Goods and Services of the same description would ordinarily be used;
  - b) are fit for a particular purpose expressly or impliedly made known to the Supplier at the time of the Purchase Order;
  - c) possess the qualities of Goods and Services which the Supplier has held out to Climatch by way of a sample or model; and
  - d) are supplied in accordance with and comply with the architect and/or consulting engineer specifications and drawings regarding the project and any Head Contract.
- 10.3 All Goods and Services provided by the Supplier must comply with the provisions of all applicable occupation health and safety legislation and any other applicable laws or regulations that may apply to the Goods or Services.
- 10.4 The Supplier must ensure that hazardous Goods have prominent and suitable warnings on all containers, packages and documents, and these warnings must comply with all statutory requirements and as otherwise reasonably required by Climatch.
- 10.5 Rejected goods may be returned to the Supplier at its risk and cost.

## 11. Warranty and Indemnity

- 11.1 The Supplier warrants:
  - a) the quality of materials and workmanship of the Goods and Services;
  - b) conformity of the Goods and Services to any Purchase Order for a period of 12 months, or such longer period as specified in the Purchase Order, or specification or as provided as a statutory requirement, from the date of practical completion of the Head Contract of the Goods and Services to Climatch.
- 11.2 The Supplier warrants that on delivery, the Goods are free and clear from any mortgage, lien, security interest or encumbrance.
- 11.3 The Supplier warrants to provide a full cash back guarantee and shall include reimbursement for any damages or costs associated with the failure and re-supply of the Goods and Services to Climatch.
- 11.4 The Supplier will indemnify and keep indemnified at all times, Climatch, its servants, agents, invitees or licensees against all loss, liability, damage, costs, actions, demands and suits of whatsoever kind or nature in relation to the Goods and Services.

## 12. Privacy

- 12.1 Climatch is bound by the *Privacy Act 1988* as amended, and takes steps to ensure that all personal information obtained in connection with the Supplier will be appropriately collected, stored, used, disclosed, transferred and destroyed in accordance with the National Privacy Principles.
- 12.2 Climatch requires that the Supplier comply with the National Privacy Principles in connection with any personal information supplied to it by Climatch in connection with any agreement between the Supplier and Climatch.

## 13. Amendments

- 13.1 Other than as expressly set out in these Terms, these Terms may not be amended, changed or supplemented other than by the written agreement of the parties.
- 13.2 Other than as expressly set out in these Terms, the terms and details of any Purchase Order (including, without limitation, design details, technical specifications, quantities, pricing and/or timing) may not be amended, changed or supplemented other than by the issuance of a supplemental, change or amendment Purchase Order by Climatch to the Supplier which is accepted to the Supplier.

## 14. Assignment and sub-contracting

- 14.1 The Supplier may not assign, transfer or grant an interest in (including a security interest) any Purchase Order or these Terms (or any part thereof) without the prior written consent of Climatch.
- 14.2 The Supplier may not sub-contract any of its obligations under any Purchase Order or these Terms to any person without the prior written consent of Climatch.

## 15. General

- 15.1 Waiver by Climatch of any specific default or defaults by the Supplier or failure by Climatch to cancel a Purchase Order, or any part of it, will not constitute a waiver by Climatch of its rights arising out of any further default by the Supplier.
- 15.2 If any term or condition is unenforceable it shall be read down so as to be enforceable or, if it cannot be read down, the term or condition shall be severed from these Terms without affecting the enforceability of the remaining Terms.
- 15.3 A notice must be in writing and handed personally or sent by facsimile or prepaid mail to the last known address of the addressee. Notices sent by facsimile are deemed received on the facsimile machine confirming transmission. A notice served by Email does not constitute effect service.
- 15.4 The National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, reissued June 2006 (the Guidelines), apply to this project. By agreeing to undertake the works, you will be taken to have read and to agree to comply with the Code and Guidelines.
- 15.5 Climatch reserves the right to make changes in the construction and/or design of goods and services ordered provided reasonable notice is given to Supplier.
- 15.6 All clerical errors are subject to correction and shall not bind Climatch. No employee of Climatch is authorized to bind Climatch unless Climatch has given Supplier express written notice to that effect.
- 15.7 The invalidity or unenforceability of any provision of these Conditions shall not affect the validity or enforceability of the remaining provisions.
- 15.8 Climatch's failure to enforce, at any time or for any period of time, any term of any contract incorporating these Conditions shall not constitute a waiver of such terms and shall in no way affect its right later to enforce it.
- 15.9 Headings are included for ease of reference and do not form part of or affect the interpretation of these Conditions.
- 15.10 These Conditions bind Climatch, Supplier and their respective successors and assigns.
- 15.11 The Supplier shall comply with all laws and regulations of the Commonwealth and States and Territories of Australia and provide all necessary information to, and obtain necessary permits, approvals, licenses, consents, authorization and exemptions from, any government authority or other appropriate body, in respect of Supplier's delivery of goods and/or services in accordance with Climatch's order.
- 15.12 Notwithstanding any other provision of this Purchase Order the only amount payable to the Supplier for an item or work will be one cent where the Supplier has not, within 60 days after completion of the item or work, claimed payment by itemized invoice for the item or work.
- 15.13 These Terms and any Purchase Order to which they apply are governed by the laws of New South Wales.