

## **TERMS AND CONDITIONS OF SUPPLY AND INSTALLATION**

These terms and conditions are the contract between you and Killahy Group Pty Ltd. By visiting or using Our Website or accepting a quote for supply and/or installation of any of our products by us, you agree to be bound by them.

We are Killahy Group Pty Ltd Service ABN 70 610 597 147 a business registered in the Commonwealth of Australia.

You are: Anyone who uses Our Website or accepts a quote for supply and/or install of any of our products by us. Please read this agreement carefully and save it. If you do not agree with it, you should leave Our Website and stop using the site immediately or do not accept a quotation.

These are the agreed terms:

Sale of Goods and Services Terms and Conditions

Standard Sale of Goods and Services Terms and Conditions for Killahy Group Pty Ltd Service ABN 70 610 597 147 a business registered in the Commonwealth of Australia.

### **Incorporation**

These terms and conditions:

- (a) govern every contract for the sale of goods and/or the provision of services by Killahy Group Pty Ltd to the Customer, and
- (b) constitute all the terms and conditions agreed among the parties hereto pertaining to the subject matter dealt with herein, to the exclusion of all the previous written or oral terms and conditions. No modification to these terms and conditions, whether put forward in the Customer's purchase order or otherwise shall bind Killahy Group Pty Ltd unless agreed to in writing by Killahy Group Pty Ltd's authorised employee.

### **Payment**

The terms of payment to Killahy Group Pty Ltd are as follows:

- (a) for the supply and installation of air conditioning units, payment is strictly 50% deposit and full payment before dispatch, unless otherwise agreed, to a maximum of net 7 (seven) days from the date of invoice;
- (b) for the provision of service, payment is strictly on Cash On Delivery (CoD) basis, unless otherwise agreed to a maximum of net 7 (seven) days from the date of invoice.
- (c) Killahy Group Pty Ltd shall be entitled to render to The Customer progress claims based on a pro rata value of works completed for projects which extend more than 7 days. Payment of such claims are to be paid by The Customer within seven (7) days from Killahy Groups invoice.
- (d) Killahy Group Pty Ltd reserves the right to cease work until any outstanding claims have been paid in full.

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### **Default & Consequences of Payment Default**

- (a) Failure to pay within the agreed credit terms will automatically create Stop Credit, and will not be re-commenced until payment is received for all amounts outstanding beyond agreed credit terms.
- (b) If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Killahy Group Pty Ltd from and against all costs and disbursements incurred by Killahy Group Pty Ltd in pursuing the debt, including legal costs, on a solicitor and own client basis, and Killahy Group Pty Ltd Collection Agency costs.
- (c) Without prejudice to any other remedies Killahy Group Pty Ltd may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Killahy Group Pty Ltd may suspend or terminate the supply of goods and services to the Customer. Killahy Group Pty Ltd will not be liable to the Customer for any loss or damage the Customer suffers because Killahy Group Pty Ltd exercised its rights under this clause.
- (e) Without prejudice to Killahy Group Pty Ltd's other remedies at law, Killahy Group Pty Ltd shall be entitled to cancel all or any part of any order of the Customer, which remains unperformed and all amounts owing to Killahy Group Pty Ltd shall, whether or not due for payment, become immediately payable in the event that:
- (i) any money payable to Killahy Group Pty Ltd becomes overdue, or in Killahy Group Pty Ltd's opinion, the Customer will be unable to meet its payment obligations as they become due; or
  - (ii) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (iii) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### **Quotations and Prices**

- (a) Any quotation given by Killahy Group Pty Ltd is a mere invitation to treat and does not constitute a contractual offer. All quotations shall be valid for 30 (thirty) days after issue, however Killahy Group Pty Ltd may withdraw a quotation at any time.
- (b) Prices included in the quotation are based on the specification, drawings and/or requests by the Customer. Should the specification or Customer's request change, then Killahy Group Pty Ltd reserves the right to vary the quotation price.
- (c) All quoted prices are exclusive of GST unless otherwise stated.

### **Delivery**

- (a) The times quoted for delivery are estimates only and Killahy Group Pty Ltd 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 Killahy Group Pty Ltd.
- (b) Risk in the Goods passes to the Customer on delivery.
- (c) Killahy Group Pty Ltd if requested to enter a property accepts no responsibility for any damage caused by Killahy Group Pty Ltd or its agents. The Customer shall indemnify Killahy Group Pty Ltd and hold Killahy Group Pty Ltd and its agent harmless against any charges or costs of whatsoever nature incurred as a result of or arising out of Killahy Group Pty Ltd or its agent's vehicle entering the property.

## Installation

- (a) The Customer shall supply water and power at all times during the installation. If these are not supplied The Customer shall be liable for any costs incurred by Killahy Group Pty Ltd.
- (b) The Customer is responsible for the clearing of the site of all obstruction, rubbish, reticulation, vegetation and other hindrances unless included in The Companies written Quotation.
- (c) Prior to the commencement of work, The Customer shall;
  - (i) Locate and identify all underground obstructions including but not limited to, telephone lines, power lines, gas, water and storm water lines.
  - (ii) Ensure that all boundary and survey pegs are in the correct position and approve the set out by Killahy Group Pty Ltd's agent prior to the commencement of work. The Customer shall fully indemnify from all actions and penalties as a result of failing to do so.
  - (iii) Shall secure all pets and animals and for the protection of all plants, ornaments, ponds, fixtures and other infrastructure. Whilst Killahy Group Pty Ltd will exercise "all care", no responsibility will be accepted for any losses or claims by third parties.
  - (iv) Obtain at their own expense all permits required by the Council and other authorities and shall fully indemnify Killahy Group Pty Ltd from all actions and penalties as a result for failing to do so.
  - (v) Obtain access rights from the adjoining neighbours where a common boundary will be involved.
- (d) Concrete undulations may create the need for gaps under the panels, gates and doors, Killahy Group Pty Ltd will make every endeavour to keep these to a minimum but does not warrant that these will be eliminated.

## Killahy Group Pty Ltd Warranty and Claims

- (a) Service under warranty shall only be available between the hours of 7.30am to 3.30pm Monday to Friday, and excludes public holidays, and warranty does not include routine maintenance service including misuse of equipment, lack of routine maintenance or operator error.
- (b) Warranty for the purpose of this clause is either:
  - (i) Installation warranty; a guarantee of workmanship and associated materials on new installations for a period of 6 (six) months, whereby Killahy Group Pty Ltd will repair the product in the event of any defect,
  - (ii) 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.
- (c) All costs of freight and travelling expenses associated with making a claim under this warranty are to be paid by the Customer.
- (d) The Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a "major failure" and for compensation for any other reasonably foreseeable loss or damage. 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".

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(e) The benefits to you given by Killahy Group Pty Ltd 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.

(f) Warranty on goods 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.

(g) The Customer must provide proof of purchase to make a claim under any warranty.

(h) Differences in the lustre, colour and roughness of galvanized coatings do not affect the corrosion resistance of the coating and are not grounds to make a claim under warranty.

(i) During transport and/or storage the galvanised steel is bundled tightly together, this tight bundling can result in a storage stain if the product comes in contact with any moisture. While we make all efforts to prevent or remove these stains before delivery to the customer we cannot guarantee that all stains will be removed. These storage stains do not affect the corrosion resistance of the galvanising and are not grounds to make a claim under warranty.

#### **Retention of Title**

(a) All equipment supplied and installed by Killahy Group Pty Ltd remains the property of the Killahy Group Pty Ltd until all monies outstanding to Killahy Group Pty Ltd in connection with these Terms and Conditions have been paid.

(b) It is the intention of Killahy Group Pty Ltd and agreed to by the Customer that ownership of Materials & Goods shall not pass until the Customer has met all other obligations due by the Customer to Killahy Group Pty Ltd in respect of all contracts between Killahy Group Pty Ltd and the Customer.

(c) In the event of a default by the Customer, then without prejudice to any other rights which Killahy Group Pty Ltd may have at law or under this contract:

(i) Killahy Group Pty Ltd or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.

(ii) Killahy Group Pty Ltd may recover and resell the Goods;

i. If the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Killahy Group Pty Ltd may in its absolute discretion seize all Goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Killahy Group Pty Ltd and the Customer may be ascertained. Killahy Group Pty Ltd must promptly return to the Customer any Goods the property of the Customer and Killahy Group Pty Ltd is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.

(d) Receipt by Killahy Group Pty Ltd 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 and until then the Killahy Group Pty Ltd's ownership or rights in respect of Materials and/or Goods shall continue.

(e) It is further agreed that:

(i) where practicable, the Materials and/or Goods shall be kept separate and identifiable until Killahy Group Pty Ltd shall have received payment and all other obligations of Killahy Group Pty Ltd are met; and

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(ii) until such time as ownership of the Materials and/or Goods shall pass from Killahy Group Pty Ltd to the Customer, Killahy Group Pty Ltd may give notice in writing to the Customer to return the Materials and/or Goods or any of them to Killahy Group Pty Ltd. Upon such notice, the rights of the Customer to obtain ownership or any other interest in the Materials and/or Goods shall cease; and (iii) Killahy Group Pty Ltd shall have the right of stopping the Materials and/or Goods in transit whether or not delivery has been made

### **Retention Money**

Unless otherwise provided in writing, the Customer shall not be entitled to retain any part of the purchase price by way of retention monies to guarantee satisfactory operation of the equipment supplied and installed.

### **Warranties**

All goods are subject to manufactures warranty

**Upon acceptance our quote then becomes a contract – meaning the client accepts the terms and conditions listed above and below.**

All equipment installed shall remain the property of Killahy Group Pty Ltd until payment has been received in full. Killahy Group Pty Ltd has the right to enter the premises where work has been performed and recover the equipment if default is made on payment.

We take full responsibility for the repair of components installed. However we do not take responsibility for any consequential damages to property after the installation is complete and the goods have been commissioned or the customer has started to use the goods.

Any costs incurred due to poor access to the work area are to be borne by the client.

System maintenance is the responsibility of the owner and should be undertaken regularly to avoid any damage to property. If the damage is deemed to be from negligence, lack of servicing or misuse by the customer, we will not be held liable for any repairs.

It is acknowledged by the client that the following shall be the sole responsibility of the client to arrange regular servicing.

If in the event a service call is placed and it is found that the equipment is operating normally or malfunctioning due to misuse or negligence by the client or the equipment has not been properly maintained by an authorised person in accordance with the manufacturer's recommendations, the client will pay the cost of the service call together with labour and material costs.

Warranty service will be performed during normal business hours Monday to Friday. Any work requested outside these hours will be charged at "out of hours" rates.

Warranty will not be covered if it is found equipment is damaged by outside influences beyond the control of Killahy Group. Some examples of this are: vandalism to equipment, flood, fire, lightning strike, modifications to equipment carried out by unauthorised personnel.

In some circumstances planning approval may be required prior to; it is the client's responsibility to determine whether this is the case and to obtain any necessary approvals that may be required.

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Killahy Group Pty Ltd is not responsible for any electrical upgrades from the street mains to the switchboard unless specifically quoted for in writing

Killahy Group Pty Ltd is not responsible for structural changes and making good.

To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions are excluded and Killahy Group Pty Ltd is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:

- (i) any increased costs or expenses;
- (ii) any loss of profit, revenue, business, contracts or anticipated savings;
- (iii) any loss or expense resulting from a claim by a third party; or
- (iv) any special, indirect or consequential loss or damage of any nature whatsoever caused by Killahy Group Pty Ltd failure to complete or delay in completing the order to deliver the Goods.

### **Indemnity**

To the full extent permitted by law, the Customer will indemnify Killahy Group Pty Ltd and keep Killahy Group Pty Ltd indemnified from and against any liability and any loss or damage Killahy Group Pty Ltd may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms and Conditions by the Customer or its representatives.

### **Exclusions**

The price agreed herein does not include any expense covering damage arising from hidden or unknown contingencies found at the job site: example – faults or deteriorations of the building structure, pre-existing conditions of the site, heritage or preservation orders, finding of hazardous substances and the like, unless specifically noted in the tender price.

### **General**

- a) This Agreement shall, in all respects, be governed by, and construed and interpreted in accordance with, the Laws of Australia without giving effect to any conflicts of law principles of such State that might refer the governance, construction or interpretation of this Agreement to the Laws of another jurisdiction.
- b) These Terms and Conditions contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.
- c) Any conditions found to be void, unenforceable or illegal may, to that extent be severed from these Terms and Conditions.
- d) No waiver of any of these Terms and Conditions or failure to exercise a right or remedy by Killahy Group Pty Ltd will be considered to imply or constitute a further waiver by Killahy Group Pty Ltd of the same or any other term, condition, right or remedy.

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